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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION
HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE

RENO MAY, et al.,)	
)	
Plaintiffs,)	Certified Transcript
)	
vs.)	Case Number:
)	8:23-cv-01696-CJC-ADS
ROBERT BONTA, IN HIS OFFICIAL)	
CAPACITY AS ATTORNEY GENERAL)	
OF CALIFORNIA)	
)	
Defendant.)	
<hr/>		
MARCO ANTONIO CARRALERO, et al.;)	
)	
Plaintiffs,)	Case Number:
V.)	8:23-cv-01798-CJC-ADS
)	
ROB BONTA, IN HIS OFFICIAL)	
CAPACITY AS ATTORNEY GENERAL OF)	
CALIFORNIA,)	
)	
Defendant.)	
<hr/>		

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MOTION FOR PRELIMINARY INJUNCTION
WEDNESDAY, DECEMBER 20, 2023
1:29 P.M.
SANTA ANA, CALIFORNIA

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SANTA ANA, CALIFORNIA; WEDNESDAY, DECEMBER 20, 2023

1:29 P.M.

- - -

01:29PM THE COURTROOM DEPUTY: Calling Item Number 2,
SACV-23-1696, Reno May, et al. vs. Robert Bonta, et al.;
SACV-23-01798, Carralero, et al. vs. Rob Bonta.

Counsel, please state your appearances.

MR. MOROS: Konstadinos Moros on behalf of the May
01:30PM plaintiff and specially appearing for the Second Amendment
Foundation.

THE COURT: Sir.

MR. FRANK: Alexander Frank for the May plaintiffs,
and also specially appearing on behalf of the SAF.

01:30PM THE COURT: Hello, sir.

MR. BENBROOK: Bradley Benbrook for the Carralero
plaintiffs.

THE COURT: Hello, sir.

MR. DUVERNAY: Steve Duvernay for the Carralero
01:30PM plaintiffs.

THE COURT: Hello, sir.

MR. MEYERHOFF: Robert Meyerhoff on behalf of the
Attorney General.

MR. GRABARSKY: Todd Grabarsky for the Attorney
01:30PM General as well.

1 THE COURT: Hello, sir.

2 MS. REILLEY: Jane Reilley for the Attorney General.

3 THE COURT: Hello.

4 MS. PLANK: Lisa Plank for the Attorney General.

01:30PM 5 THE COURT: Hello.

6 I feel outgunned. No pun intended.

7 All right. Well, I have the motion before me. I
8 have a few general questions that I think kind of apply to both
9 sides, and then I'd like to hear from everybody.

01:31PM 10 The general question is -- I just like to understand
11 from a context -- did the California Legislature or the
12 Governor make any attempt or effort to analyze *Bruen* before
13 SB 2 was enacted and is set to go into effect.

14 And again, this is a general question. I'm not so
01:31PM 15 sure it's relevant to the actual legal analysis, but I'm trying
16 to understand the true purpose behind SB 2 in that it's geared
17 towards concealed carry permit holders. And are concealed
18 carry permit holders the real source of the horrific problem of
19 these mass shootings and school shootings?

01:32PM 20 And then another question I have is what are the
21 public places that are left for concealed carry permit holders
22 to carry their firearms or handguns in light of the scope of
23 SB 2?

24 And then here's one question that I know that is
01:32PM 25 part of the legal analysis of *Bruen*: Is there any dispute

1 among the parties that the plain text of the Second Amendment
2 protects the plaintiff's right to carry and use their handguns
3 to protect themselves in public?

4 All right. Pretty general questions, but I thought
01:32PM 5 the briefing on both sides was quite thorough and quite
6 helpful, and I appreciate it. And everybody submitted their
7 historical analog; so I get that.

8 So these questions, I know, are -- most of my
9 questions are really more big picture in context, but I'd like
01:33PM 10 to understand it.

11 Should I hear from the plaintiffs first?

12 MR. FRANK: Yes, Your Honor. Should I approach?

13 THE COURT: Please.

14 MR. FRANK: So unsurprisingly, Your Honor, I
01:33PM 15 prepared some remarks. I'm going to address the Court's
16 questions before I proceed to that.

17 Prior to entering, I conferred with the Carralero
18 plaintiff's counsel. And because there's some overlap in what
19 we were seeking to enjoin, we've tentatively agreed to split up
01:34PM 20 those issues to conserve time here today. So there may be
21 things that you might expect me to hear about -- or my
22 co-counsel to talk about which may be a little bit of a left
23 wing -- or rather a left-field change, but with that, I'll
24 proceed.

01:34PM 25 So, to respond to the Court's first question, I

1 believe in the preamble to SB 2, there was some -- something to
2 the effect of we've researched and determined that SB 2 would
3 withstand scrutiny under *Bruen*. They didn't say a whole lot
4 more than that. And I remember when I read it myself, I
01:34PM 5 thought, oh, that's interesting. I'd like to see how to
6 build -- how that essentially converts the mere entirety of the
7 space outside the home into a sensitive place could comport
8 with the *Bruen* ruling. Seems to be incongruous.

9 Be that as it may, I didn't see much in the
01:34PM 10 legislative record on anybody's behalf, whether it was the
11 Attorney General or the state legislature or the Governor, to
12 actually dig into the historical analysis to see whether or not
13 SB 2 would withstand scrutiny under *Bruen*. And by that, I mean
14 historical scrutiny.

01:35PM 15 THE COURT: Was there any public statements made by
16 the Governor or any of the proponents of SB 2 about *Bruen* and
17 whether it was a good decision or bad decision?

18 MR. FRANK: There were. I believe the Governor, in
19 no uncertain terms, expressed his displeasure with the Supreme
01:35PM 20 Court. I believe he said something to the effect of "this is
21 going to create chaos and how could it possibly be wise of the
22 Supreme Court to expand the right to be armed outside of the
23 home to the whole nation." He -- I don't believe he had
24 anything positive to say about it at all.

01:35PM 25 I believe shortly after the *Bruen* decision came down

1 in 2022, the Attorney General posted some official press
2 releases that announced that certain aspects of California law
3 were likely -- couldn't be reconciled with the Supreme Court
4 decision, and that specifically the good cause requirement
01:36PM 5 would have to be struck down because it was essentially the
6 same as the good cause requirement that the -- that was at
7 issue before the Supreme Court in *Bruen* was struck down. He --
8 I don't believe the Attorney General used any language as
9 sharply critical as Governor Newsom did.

01:36PM 10 So going to the next question, the Court is correct,
11 that SB 2 regulates people who are lawfully carrying pursuant
12 to permits. And that does create a strange question to ask
13 here, which is the State of California mandates that people go
14 through rather extensive vetting, you know. You have to be a
01:36PM 15 nonprohibited person to get a permit to own a gun to lawfully
16 have possession of a firearm everywhere in the country,
17 especially in California.

18 And in addition to that, you have to take classes,
19 you have to pay, in which -- in some cases, exorbitant fees.
01:36PM 20 They're never less than a few hundred dollars. And it begs the
21 question: Well, if the utility of that permit with SB 2 in
22 place is brought to a near nullity, well, what's the point of
23 getting it?

24 And why is the State so concerned about preventing
01:37PM 25 people who have proven that they are not prohibited people?

1 And the people who have been willing to go through all the
2 hoops that the State has directed for them, why are we turning
3 this into a nullity for them? We should be rewarding them.
4 They have a constitutional right to be armed outside the home
01:37PM 5 for self-defense.

6 And turning to the third question in which I think
7 I've probably answered to some degree, under my reading of
8 SB 2, it sure seems like there isn't much more than the
9 sidewalk left for somebody. There are a couple provisions in
01:37PM 10 particular, particularly what's colloquially become known as
11 the vampire rule, which is the rule that provides that --
12 believe it's Subdivision (a)(26) of 2630, that creates a
13 default presumption on any commercial private property, which
14 is the vast sum of places where people actually spend their
01:38PM 15 time outside of their home, that carry is not okay. And in
16 order to veto that default presumption, you have to post
17 signage. Not a gigantic sign, but you have to make it clear,
18 and now people can carry.

19 We live in a -- in an area that's politically
01:38PM 20 diverse, and it's, you know, not going to surprise me to see
21 that hardly any of the places that I frequent don't have that
22 sign.

23 So this is a big problem. This is a total inversion
24 of what it means to have a right to be armed outside the house
01:38PM 25 in public. Most of the time when we're out in public -- I

1 mean, maybe I'm a bad exception because I'm an attorney and I
2 spend a lot of time in government buildings.

3 THE REPORTER: I'm sorry, Counsel, can you slow
4 down, please.

01:38PM 5 MR. FRANK: I can. My apologies.

6 For most people what they think is the public space
7 is not the public space. It's privately-owned commercial
8 property. That's where most people spend most of their time.
9 Even office buildings most of the time are considered

01:39PM 10 commercial property.

11 So the vast majority of places that people actually
12 are and presume that the right that *Bruen* recognized to be
13 armed outside of your home for self-defense are within the
14 scope of this one provision of SB 2, which is extraordinarily
01:39PM 15 powerful. And it's really no surprise that every jurisdiction
16 that's enacted a law like this, post-*Bruen*, has seen a Federal
17 District Court strike it down. It effectively nullifies the
18 right that *Bruen* announced.

19 And then, when you look at all the other places that
01:39PM 20 are specifically precluded under SB 2, it makes you scratch
21 your head and wonder, "Well, where can I do this? I suppose
22 when I'm walking my dog outside on the public sidewalk or in my
23 car driving somewhere. But the way that the law is written, I
24 really have to be careful about where I'm driving."

01:39PM 25 Because if I'm driving to, say, meet a friend for

1 lunch and I do not plan on having any alcohol, if there's a
2 parking lot that's shared with an establishment that serves
3 alcohol on premises consumption, well, driving to that parking
4 lot and getting in my car is illegal. So I might as well just
01:40PM 5 leave my gun at home.

6 I think there is definitely -- you can definitely
7 see the intent to nullify *Bruen* in certain subdivisions of
8 SB 2, particularly those two.

9 THE COURT: Before you go to the last question, I
01:40PM 10 just take it from the briefs -- and you said that too, I think,
11 already -- you don't believe that SB 2 is going to mitigate,
12 reduce the horrific shootings that we see across the country.

13 All right. So let's assume I agree with you. Then
14 why do you think California legislature has enacted this law?
01:40PM 15 What's the purpose?

16 MR. FRANK: I think it's animosity towards the
17 Second Amendment. I think that there is -- you know, there's a
18 raging culture war in our country, and the Second Amendment is
19 one of the key battle zones of that culture war. And it's no
01:41PM 20 surprise to me when I see elected representatives in our state
21 or any other states that skew politically the way the State
22 does, they announce that. They think that not just *Bruen* is a
23 disaster decision, but that *Heller* was a disaster decision, it
24 was erroneously decided.

01:41PM 25 And the militia clause of the Second Amendment means

1 that you're only allowed to have a gun in the context of the
2 malicious service. There's been intransigence of that issue
3 since day one of the federalization of the right to bear arms
4 and that that hasn't abated.

01:41PM 5 So I really do think that California has -- at least
6 most of the elected representatives in the state of California
7 just have a barely concealed animosity for the right to bear
8 arms, and they think that -- they don't really draw much of a
9 distinction between, you know, an honest citizen with a firearm
01:42PM 10 and criminals who would do terrible things.

11 And it strains all -- it strains common sense for me
12 to, you know, to look at all the evidence that we have of all
13 the horrific carnage that unfortunately has been committed with
14 firearms in our society in recent memory, terrible mass
01:42PM 15 shootings, and think, well, this criminal violated every gun
16 law there is.

17 I mean, murder is already a crime, and clearly the
18 sign that said this is a gun-free zone didn't stop this
19 criminal from walking into a purportedly gun-free zone and
01:42PM 20 murdering strangers who were defenseless because they were
21 complying with the law that said they can't have a gun. But,
22 clearly, that law didn't stop the mass murderer from entering
23 and taking an innocent life.

24 THE COURT: These mass shootings, to your knowledge,
01:42PM 25 at least limited to California, any done by concealed carry

1 permit holders?

2 MR. FRANK: Not to my knowledge. I'm aware that in
3 some cases -- and probably more than some cases, the people who
4 perpetrate mass shootings obtain their firearms illegally
01:43PM 5 because they are not prohibited persons. They lack the
6 criminal record and, in most cases, seem to be demonstratively
7 mentally ill, but for various reasons have slipped through the
8 cracks in the health care system. They can go pass a
9 background check and they get a gun and do something horrible
01:43PM 10 with it.

11 But as far as concealed carry permit holders
12 committing crimes, the data that I'm aware of is highly
13 questionable, because in some cases the data, it lumps in -- it
14 takes situations where people who have permits have been
01:43PM 15 arrested for, say, DUI or for fraud or crimes that have nothing
16 to do with violence and then uses these statistics to say that
17 people who carry permits are X times more likely to commit
18 crimes or commit crimes at a certain percentage.

19 There's a famous study done by a well-known academic
01:43PM 20 who often is an expert witness on behalf of state government
21 Second Amendment cases. And when you dig into the data, you
22 say, okay, this data has been -- it's questionable. The way
23 that they have constructed this data clearly was to reach a
24 predetermined conclusion, and that's to honestly and
01:44PM 25 scientifically say, "What do we know about people who are

1 permit holders?"

2 To my knowledge, there's no data that says any
3 concealed carry permit holder in California or anywhere has
4 perpetrated a mass shooting.

01:44PM 5 THE COURT: Now, you said it in a, quite frankly, a
6 little bit of a negative way, that you believe the legislators
7 have a hostility towards the Second Amendment. Could you say
8 it in a positive way, that they feel in this modern day and age
9 that if you're not in the military, you're not in the police,
01:44PM 10 we should be pacifists and we shouldn't have -- it's not good
11 for our psyche, our morale to arm ourselves and defend
12 ourselves in public?

13 MR. FRANK: I think that debate is as old as time.
14 And I can probably -- if I strain myself, I can -- I probably
01:45PM 15 don't have to actually strain myself. There are reasonable
16 people on the opposite side of the political spectrum on this
17 issue who think that if we just had fewer guns, we'd be better
18 off. I don't think these people are necessarily lying about
19 that. I think it's a philosophical difference of opinion
01:45PM 20 about, you know, what is the proper approach to weapons in
21 society.

22 But I think in many cases there's a -- that point of
23 view, very often it doesn't leave enough space for the -- for
24 the legitimate concerns on the other side, which are that
01:45PM 25 people have a right to self-defense. Some people think that's

1 a God-given right. Some people view it as foreign from the
2 Constitution or from other humanistic principles. It doesn't
3 matter.

4 Most people would agree that people have a moral --
01:45PM 5 there's a moral -- it's morally legitimate to exercise
6 self-defense even if that means killing in self-defense. And
7 whether that's inside your home or outside your home shouldn't
8 make a difference. And that's what the Supreme Court echoed in
9 *Heller*, and that's what the Supreme Court echoed in *Bruen*. It
01:46PM 10 predates the Constitution. Second Amendment codified a
11 preexisting right, I believe was the language that
12 Justice Scalia used.

13 So, yeah, it's hard --

14 THE REPORTER: Counsel, slow down.

01:46PM 15 MR. FRANK: My apologies.

16 It is a -- there's a limit to the charity to which
17 I'm willing to extend because of the shear volume of noises
18 coming from elected representatives that would like to see the
19 Second Amendment be nullified.

01:46PM 20 THE COURT: I want to confirm. What's before me in
21 effect is handguns; right? We're not talking about assault
22 rifles or machine guns?

23 MR. FRANK: That's correct, Your Honor. You cannot
24 get a permit -- well, first of all, you can't own a machine gun
01:46PM 25 in California. That's been an awful long time and we're not

1 challenging that here today. You cannot put an assault weapon
2 on a permit card. Most restrictions will limit the number of
3 firearms you're allowed to have.

4 THE COURT: It's pretty hard to conceal it on your
01:47PM 5 person.

6 MR. FRANK: It is. It is.

7 THE COURT: So that -- because I understand there is
8 cases out there where that's being challenged. That's not
9 before me.

01:47PM 10 MR. FRANK: That's correct, Your Honor.

11 THE COURT: The focus is just on handguns.

12 MR. FRANK: Correct. And if I recall, the
13 statute -- the concealed carry issue and statute might
14 reference handguns specifically. I think it probably does.

01:47PM 15 But, yeah, there's obviously an issue with
16 concealing a rifle of any sort. It's nearly impossible without
17 completely changing, you know, one's everyday clothes.

18 THE COURT: I think I was the one who diverted you.
19 You were about ready to address my fourth question.

01:47PM 20 MR. FRANK: Right. The dispute over the plain text.
21 I believe in the State's briefing there was some argument to
22 the effect of -- and this goes to the question of how does the
23 *Bruen* test apply. There's this language that courts have
24 interpreted as establishing a threshold inquiry about whether
01:48PM 25 the plaintiff's conduct is covered by the Second Amendment's

1 text.

2 And I believe there were some -- at least as far as
3 some of the subdivisions that we're challenging here today,
4 there was some dispute as to whether or not plaintiffs have
01:48PM 5 passed the threshold inquiry, whether the Second Amendment
6 extends to carrying those particular places that we believe it
7 does and State believes it doesn't.

8 But there really shouldn't be -- in my opinion, you
9 can't read -- you can't read *Bruen* and dispute that the plain
01:48PM 10 text doesn't -- is not implicated when we're talking about
11 carrying handguns in public. I believe that the express
12 formulation under the *Bruen* opinion is that the conduct here is
13 carrying handguns in public. It wasn't even carrying concealed
14 handguns in public, and it wasn't carrying handguns in most of
01:49PM 15 the places that people go in public; it was general. And the
16 word "general" appears in *Bruen*. We're supposed to define the
17 conduct at issue in this threshold inquiry generally.

18 The State contends we don't. The State thinks we
19 define it as narrowly as possible because that would help the
01:49PM 20 State. But you can't reconcile that with the plain text under
21 *Bruen*. It says we do this generally. And the same issue here
22 is the same issue in *Bruen*.

23 THE COURT: All right. What did you want to go
24 over? You said you had --

01:49PM 25 MR. FRANK: I feel like I've been up here a while.

1 I don't want to deny the Carralero counsel an opportunity to
2 address some of those same questions. I'm happy to continue.
3 It's your courtroom, Your Honor.

4 THE COURT: Whatever you want. It's your record.

01:49PM 5 MR. FRANK: I take it I'll have another opportunity
6 to come up here?

7 THE COURT: You will.

8 MR. FRANK: Thank you.

9 MR. BENBROOK: Afternoon, Your Honor.

01:50PM 10 THE COURT: Good afternoon, sir.

11 MR. BENBROOK: Getting to your first couple of
12 questions about attempts to analyze *Bruen*, comply with *Bruen*,
13 and the true purpose of the law, I don't think there can be any
14 legitimate dispute that the true purpose of this law is to --
01:50PM 15 for the State legislature to thumb its nose at the Supreme
16 Court and the *Bruen* decision. This is referred to generally by
17 many people as a *Bruen* response bill that many states had that
18 enacted. And the response to *Bruen* is to say "We object. We
19 don't like it, and we're going to do something about it."

01:50PM 20 *Bruen* established a general right to public carry.
21 You carry -- you can carry for self-defense when you leave your
22 home. The Court was very explicit that you cannot treat areas
23 as sensitive just because they're crowded. Indeed, it's
24 stressed. There are relatively few sensitive places,
01:51PM 25 historically, and it identified only three.

1 California, reading that, has decided now all of a
2 sudden, nearly every place outside the home is sensitive, just
3 as counsel acknowledged. And we agree with respect to
4 Your Honor's question, where is it left to carry? Basically,
01:51PM 5 all we can come up with is sidewalks.

6 So how can it be that all of a sudden every place is
7 sensitive? By definition, a sensitive place is different than
8 a normal place. If these places at issue in this lawsuit were
9 actually sensitive, California could have and would have
01:51PM 10 treated them as such long before *Bruen*. But California has
11 been carrying in these locations for 173 years, since the State
12 became a state in 1850.

13 And just a side note, Your Honor, which we might get
14 back to later, the fact that SB 2 is now radically changing the
01:52PM 15 status quo is really worth emphasizing in the preliminary
16 injunction stage. And joining these new bans will maintain the
17 status quo.

18 I'd like to go over a couple of additional -- couple
19 themes, big picture points, and whether you'd like -- we're at
01:52PM 20 Your Honor's disposal whether you'd like us to start running
21 through the different supposed sensitive places with the
22 plaintiffs first or sensitive to the State's burden. We might
23 suggest that they go first when it comes to identifying the
24 specific locations, and we can respond.

01:52PM 25 But while I'm here, I'd like to take a few minutes

1 to go over additional themes and points that we ask Your Honor
2 to keep in mind as you're hearing from the State.

3 THE COURT: Well, I would welcome and I appreciate
4 the themes. I -- there's a lot of different places that the
01:53PM 5 Attorney General is -- wants to designate as sensitive. And I
6 thought the briefing on the historical analogs was very
7 thorough on both sides. So I want to use this time
8 efficiently.

9 So I encourage big themes and issues you want me to
01:53PM 10 have front and center. If there are any specific places that
11 you think that briefing addresses but you want to reiterate
12 your points, I encourage that too. But I don't think it's
13 necessary, at least from where I'm sitting, to go through each
14 of the individual areas.

01:53PM 15 MR. BENBROOK: Okay.

16 THE COURT: Because there are so many.

17 MR. BENBROOK: That's helpful, Your Honor. And I
18 may have to put that in mind. We may go through my notes and
19 come back up a little bit, but I'll do my best.

01:53PM 20 At this point, I'd like --

21 THE COURT: I have no -- what I was intending to do
22 was give plaintiffs their first, then give the defense their
23 shot, give plaintiffs their shot, and then defendants have the
24 last word as far as the procedure.

01:54PM 25 MR. BENBROOK: Okay. Well, I'll try to be as

1 efficient as possible, Your Honor.

2 So in terms of big pictures and themes, one of
3 the -- the unifying theme for sensitive places identified in
4 *Bruen* is that the Government provided comprehensive security at
01:54PM 5 those locations. When the Government is providing security,
6 the people do not need to carry to defend themselves. This is
7 referred to in the *Kopel* and *Greenlee* article, the sensitive
8 places doctrine, and *Bruen* cited it. *Bruen* recognized that
9 concept.

01:54PM 10 The Government claims, one of -- its principal claim
11 here really is that there is a very different unifying theme,
12 and that theme is that crowded areas are sensitive. But *Bruen*
13 categorically rejects this argument in its discussion of
14 sensitive places. It says:

01:55PM 15 "Expanding the category of sensitive places
16 simply to all places of public congregation that
17 are not isolated from law enforcement would
18 eviscerate the general right to public carry."

19 It's far -- it would be "expand the category of
01:55PM 20 sensitive places far too broadly," it says.

21 Next theme -- next big picture point. To carry its
22 burden, the State needs to be able to point to distinctly
23 similar historical regulations, but it can't. In fact, after
24 *Bruen* identified the few sensitive places that had been
01:55PM 25 recognized, it said that states trying to establish new

1 sensitive places can try to -- try to analogize to those few
2 sensitive places to justifying, meaning the three places that
3 identify: courthouses, legislative assemblies and polling
4 places. The State doesn't even try to do that.

01:56PM 5 Again, the central theme of the argument is that
6 locations are sensitive because people congregate in them. But
7 *Bruen* was very clear, that concern over gun violence in crowded
8 places has existed since the founding. As a result, any new
9 regulation that addresses the social problem that's been around
01:56PM 10 that long -- in order to justify that new regulation, the State
11 needs to point to a distinctly similar historical regulation.

12 *Bruen* said it's a straightforward historical inquiry
13 when a new law addresses an old problem. And when the founders
14 could have adopted a regulation to address that problem, but
01:56PM 15 didn't, that's good evidence that the new regulation going in a
16 different direction is unconstitutional.

17 Next, important to point out, Your Honor, that
18 regulations from the late 1800s that are inconsistent with the
19 regulatory tradition of the founding cannot suffice to carry
01:57PM 20 the State's burden. If there was no well-established practice
21 of limiting carry, the founding for a particular type of
22 location, new regulations limiting carry that started appearing
23 in the late 1800s are -- and are inconsistent with the founding
24 era should not be considered.

01:57PM 25 This is very important because throughout the

1 State's briefing, location after location after location, they
2 use the same five or six laws, supposed historical analogs, two
3 of them from the late 1700s and then the rest from the
4 mid-to-late 1800s, which we can -- we have addressed in detail
01:57PM 5 in the briefing. I'm happy to address it further. But the
6 point is from the laws in the 1850s and beyond that are
7 inconsistent with the founding should not be considered.

8 Now, they may point to *Bruen's* language saying that
9 "Well, there's a scholarly debate about whether the founding
01:58PM 10 controls or the adoption of the Fourteenth Amendment should
11 control or even be relevant or equally relevant." But *Bruen*
12 really left little doubt about how that debate would be
13 resolved.

14 It said courts look to mid and late 1800s laws to
01:58PM 15 see whether they confirm a preexisting condition. Set in
16 footnote 28, evidence of late 19th and early 20th Century
17 regulations that does not provide insight into the meaning of
18 the Second Amendment when it contradicts earlier evidence and
19 will not even be considered as a result.

01:58PM 20 So, Your Honor, if in the scholarly debate the
21 Civil War era were equally as important in 1791, the Court
22 would not have said that. And the *Espinoza* case is really a
23 perfect example of this. This dealt with a claim that
24 Government aid to religious schools violated the establishment
01:59PM 25 clause.

1 By the late 1800s, 30 states had adopted the
2 so-called "No-Aid" clause. But in *Espinoza*, the Court said
3 that number doesn't matter. If in the late 1800s those laws
4 were inconsistent with the understanding of the First Amendment
01:59PM 5 establishment clause right at the founding, they don't control.
6 And Justice Barrett, in *Bruen*, pointed to *Espinoza* and said
7 *Espinoza* shows how you can't have freewheeling reliance on late
8 1800s regulations.

9 If, however, laws from the understanding of right
02:00PM 10 from the mid-to-late 1800s should play a role here, it's
11 important to note that California has zero history of
12 regulating in 170 years, since its statehood was established in
13 1850. Any of these locations as sensitive, despite a history
14 of significant violence throughout the state in the second half
02:00PM 15 of the 1800s, is literally the Wild West that California never
16 called any of these places sensitive.

17 So again, if Your Honor is inclined to consider
18 these 1800s regulations, which we have explained in great
19 detail why they shouldn't be considered, why they're not
02:00PM 20 analogous, California's history should play an important role
21 as well.

22 So with that, Your Honor, I do have a couple of
23 little points, but I would like -- if Your Honor wouldn't mind,
24 I'll -- we'll give the State a chance to talk. Or if Mr. Frank
02:01PM 25 would like to talk, I'll get a little bit more organized since

1 Your Honor -- in light of Your Honor's request.

2 THE COURT: That would be fine.

3 MR. BENBROOK: Thank you.

02:01PM 4 THE COURT: Okay. So why don't I hear, then, from
5 the State.

6 MR. MEYERHOFF: Good afternoon, Your Honor.

7 To address the questions you raised in your opening,
8 I'll take them in order. First as to the motivations of the
9 legislature, the legislature did make express findings in
02:01PM 10 passing this law. One of those express findings was to protect
11 California in their exercise of other fundamental rights and to
12 prevent them from being killed, injured, or traumatized by gun
13 violence. Indeed, the statute identifies research which shows
14 that California would be less likely to exercise fundamental
02:02PM 15 rights, including voting and other rights, if firearms were
16 present in particular sensitive locations.

17 I would submit, however, that the intentions of
18 legislatures that are relevant are the historical legislatures
19 in the historical analogs we identify, not California's
02:02PM 20 legislature today. However, I will note that California's
21 legislature expressly said that they were passing this law to
22 comply with the Supreme Court's decision in *Bruen*.

23 Second, as to concealed carry weapons permit
24 holders, as I mentioned, the role -- the legislature passed
02:02PM 25 SB 2 not simply to protect -- to prevent crime, but also to

1 prevent intimidation or to prevent people from being deterred
2 in the exercise of other fundamental rights.

3 It's also important to note that while -- even if
4 it's true that concealed carry permit holders are less likely
02:03PM 5 to participate in mass shootings, as Your Honor made the point,
6 there's still the danger of accidental shootings and shootings
7 in self-defense, both of which potentially would not be
8 criminal acts by concealed permit holders. We can understand
9 that in sensitive places, for example, schools, the legislature
02:03PM 10 could be rightly concerned about accidental shootings or
11 self-defense shootings.

12 THE COURT: But don't you think that there is almost
13 a natural right of self-defense, even if you don't want to
14 exercise that right? But traditionally -- and I have to
02:03PM 15 believe that what was behind the founders' thinking when they
16 enacted the Second Amendment was people have a right to defend
17 themselves in public and harm. They don't have a right to arm
18 themselves to create terror. I get that. But isn't there a
19 very strong right that you can go out in public and protect
02:04PM 20 yourself?

21 Maybe this is an unfair analogy or question for you.
22 But we all know what's going on in Gaza and it's horrifying.
23 And I've seen many things on the news about the intense hostile
24 rhetoric on campuses. I see rabbis at synagogues, they're
02:04PM 25 actually learning how to use a firearm and training the women

1 how to use firearms.

2 And if I were Jewish, at this day and age with all
3 that rhetoric, I'd be concerned having my child at a Jewish
4 daycare center with what I see. And shouldn't they be able to
02:05PM 5 arm themselves to defend from that kind of harm?

6 MR. MEYERHOFF: I would note as an initial matter
7 that Subsection (a)(22), which governs places of worship, does
8 provide that if the operator of that place of worship wishes to
9 permit individuals to carry firearms on the property, they can
02:05PM 10 post a sign to that effect.

11 I think you're exactly right to point to the public
12 understanding of the Second Amendment at the time it was
13 ratified. The way to identify that public understanding, in
14 addition to other evidence, is to look at the statutes that
02:05PM 15 existed at the time. So the *Bruen* opinion is not about
16 sensitive places, but there is a discussion of sensitive
17 places, and it identifies legislatures, polling places, and
18 courthouses as three examples that uses an e.g., not an i.e.,
19 it lists them as examples. It also approvingly acknowledges
02:06PM 20 that *Heller* listed schools and government buildings, which
21 plaintiffs didn't mention.

22 So we know that that universe of five sensitive
23 places, those are examples, as plaintiffs' counsel admitted,
24 the Court in *Bruen* expressly acknowledges that governments can
02:06PM 25 analogize to other sensitive places using the broader *Bruen*

1 test.

2 I will say that, for example, when it comes to
3 legislative assemblies and polling places, the Court in *Bruen*
4 cited to the article by David Kopel, which I believe that
02:06PM 5 plaintiffs' counsel mentioned as well. In that article, the
6 professors who wrote that article identified two Maryland
7 colonial statutes, one from 1647 and one from 1650, in support
8 of restrictions on legislative assemblies. And they noted one
9 constitutional provision from Delaware from 1776 as to polling
02:07PM 10 places.

11 There's no evidence in the record, and I'm unaware
12 of any evidence, that there was -- Delaware was a particular
13 site of political violence that required these restrictions in
14 1776 at polling places. Similarly, that the Maryland
02:07PM 15 legislature had experienced types of mass shootings. I think
16 the reality is when we consider -- Your Honor was discussing
17 certain, perhaps, policy considerations. And certainly, the
18 Second Amendment -- there's an outer limit of the Second
19 Amendment. And that has been defined by *Bruen*, and that is the
02:07PM 20 test set forth at Stage 2 of the *Bruen* analysis.

21 But within that, legislatures are free to make
22 policy choices, assuming they don't offend the Second
23 Amendment. So that's the historical analysis that we have to
24 proceed through, sensitive place by sensitive place is --

02:08PM 25 THE COURT: I agree with that. One of the struggles

1 for me, and sometimes you can say things that are just going to
2 get you in trouble, but there just seems, from the judicial
3 standpoint, such a disagreement on what the law is. You have
4 the majority in *Bruen*, but, of course, you have the justices --
02:08PM 5 the liberal justices saying something completely different on
6 how this test should be applied. And then, fortunately or
7 unfortunately, depending on how you're looking at it, I'm in
8 the Ninth Circuit, and I found it frustrating, quite frankly,
9 seeing the strong different views.

02:08PM 10 I mean, reasonable people can disagree on many
11 issues, and I see that on use of police force and, you know,
12 what is reasonable under the circumstances what type of force
13 you should use. I can get that. But I don't have nearly the
14 frustration in that area that I do with the Second Amendment.
02:09PM 15 And it's a very, very different view. That's the way I read
16 it. I don't know. If you share my frustration or even if you
17 don't, how do I manage myself between these two competing
18 camps?

19 MR. MEYERHOFF: I would say two things in response
02:09PM 20 to that. The first is while there was obviously disagreement
21 in *Bruen* on the standard and whether, you know, all the
22 circuits have previously used intermediate scrutiny, *Bruen*
23 struck it down.

24 What there was an agreement on by all of the
02:09PM 25 justices, both the majority and the dissent, was that sensitive

1 places restrictions, at least the five listed in sensitive
2 places -- and those were listed as examples by the majority,
3 those were constitutional. You have the majority opinion, and
4 then you even have the dissenting opinion. Justice Breyer says
02:10PM 5 the Court affirms *Heller*'s recognition that states may forbid
6 public carriage in sensitive places.

7 So there is agreement, at least on the issue of
8 sensitive places, that those five examples are settled
9 sensitive places, and that the courts and the Government can
02:10PM 10 analogize to new sensitive places.

11 I would submit the other response is that the Court
12 must go provision by provision, go through the historical
13 record, go through the *Bruen* two-stage analysis, and for each
14 sensitive place, determine whether that sensitive place
02:10PM 15 provision is constitutional. We would welcome the opportunity
16 to do that.

17 I want to address your other questions. And then to
18 the extent I don't discuss the *Bruen* standard more generally,
19 I'd like to take a minute or two just to discuss that.

02:11PM 20 THE COURT: Absolutely.

21 MR. MEYERHOFF: Thank you, Your Honor.

22 I think the question number 3 was what is the scope
23 of SB 2? I heard Your Honor's concern about the scope. I
24 think it's interesting plaintiffs' counsel acknowledged that
02:11PM 25 most of the -- that most of the places that they would be

1 restricted from going into are subject only to
2 Subsection (a)(26). That's the restriction on carriage onto
3 private property without the owner's express consent.

4 I'd like to address that provision separately, but I
02:11PM 5 think that plaintiffs have acknowledged that as to the other
6 provisions, those aren't place that people necessarily mostly
7 go to.

8 I'd also like to note that there are exceptions to
9 the law. There's an exception at Subsection (c) which applies
02:11PM 10 to if I drive to a parking lot, I can put my firearm in a
11 locked container, and I can go and, you know, do what I need to
12 do in the parking lot, come back in.

13 I would note -- and we can discuss this later, but
14 many of the historical analogs contain no such exception.
02:12PM 15 Subsection (e) provides for if you're using a public
16 right-of-way that touches or crosses one of these sensitive
17 places, as long as you move through that, you're not in
18 violation of the statute.

19 Again, (a)(10) specifically, Subsection (a)(10),
02:12PM 20 which applies to permitted public gatherings and special
21 events, that provides another exception if you need to go to
22 your residence, business, or vehicle.

23 And then I'll note that Subsection 25605 which is
24 separate from the concealed carry permitting regime, that that
02:12PM 25 says that you don't need a permit or license in order to carry

1 in your home, your place of business or privately-owned
2 property that you lawfully possess or privately owned.

3 SB 2 doesn't change that with the exception of
4 college dormitories. And we've established a rich historical
02:13PM 5 tradition of regulation therein.

6 If I have addressed your initial questions, I'd like
7 to return to the broader *Bruen* standard, if that's possible.

8 THE COURT: Please do so.

9 MR. MEYERHOFF: So the *Bruen* standard generally is
02:13PM 10 two stages we've discussed. And we believe that at Stage 1,
11 it's -- is plaintiffs' proposed course of conduct, is it
12 covered by the plain text of the Second Amendment?

13 Now, plaintiffs argue that you can define that
14 course of conduct at a high degree of generality, but we've
02:13PM 15 cited cases, the *Renna* case as well as another in our briefing,
16 that discuss how the course of conduct needs to be specifically
17 defined. Otherwise, Stage 2 becomes a nullity.

18 Assuming that the course of conduct is covered by
19 the Second Amendment's plain text, the burden shifts to the
02:13PM 20 Government to identify a relevantly similar -- not distinctly
21 similar -- the Court says relatively similar historical analog
22 or analogs that fit within the nation's historical tradition of
23 firearms regulation.

24 I think it's important to contrast the law that's at
02:14PM 25 issue in *Bruen* and the law that's at issue here. Because I

1 think sometimes in plaintiffs' briefing, a lot of their
2 misapprehensions and misapplications come from confusing the
3 *Bruen* test itself with the application of the *Bruen* test to the
4 law and facts in that case.

02:14PM 5 So as a Second Circuit recently noted in the opinion
6 in *Antonyuk*, which came out earlier this month and relates to
7 sensitive places, we filed a notice of supplemental authority.
8 The law that was at issue in *Bruen* was, quote/unquote,
9 "exceptional." And it was exceptional for two reasons.

02:14PM 10 The first reason is that the Court in *Bruen* said
11 unlike any other right we're aware of, the law that was
12 challenged in *Bruen* conditions the exercise of that right on a
13 Government -- on Government's discretion. It was an
14 individualized determination of who can exercise that right and
02:15PM 15 who can't. Plaintiffs raised other constitutional challenges
16 to SB 2, but for these sensitive places provisions, there's no
17 discussion of an individual discretion.

18 Now, the other distinction in *Bruen* was *Bruen*
19 identified an overwhelming evidence of an enduring American
02:15PM 20 tradition of permitting carriage outside of the home. Now
21 contrast that with *Bruen's* discussion of sensitive places where
22 it listed the five sensitive places and said, "We're aware of
23 no disputes regarding the constitutionality of such
24 prohibitions."

02:15PM 25 Another important distinction between *Bruen* and here

1 is *Bruen* identified a number of 19 Century opinions that struck
2 down or otherwise challenged the constitutionality of the
3 historical analogs that New York and *Bruen* identified.

4 Here, by contrast, we are unaware of any challenges
02:15PM 5 from the 19th Century that were successful to sensitive places
6 provisions. Plaintiffs have identified none. And, in fact,
7 quite the opposite. At page 20 and 21 of our opposition, we've
8 identified numerous cases from the second half of the
9 19th Century, including *Owens*, *Shelby*, *Alexander*, and several
02:16PM 10 others that affirm convictions and otherwise rejected
11 constitutional challenges to sensitive places laws, broad
12 sensitive places laws in many cases.

13 So in *Bruen*, in light of this overwhelming evidence
14 of a countervailing tradition of permitting carry outside the
02:16PM 15 home, the Court seemed to require more evidence and more
16 analogs. But *Bruen* noted in the context of sensitive places
17 provisions, the historical record yields relatively few of
18 these provisions. Yet, as the Court in *Allam* noted, *Bruen*
19 seemed to find those few precursors to be compelling. And, in
02:16PM 20 fact, we discussed that with having two Maryland laws which
21 predate the ratification of the Second Amendment by 140 years,
22 and one Delaware law that's also 15 years before the Second
23 Amendment.

24 So with that in mind, I think there's a few
02:17PM 25 apprehensions in plaintiffs' briefing in that we discuss to

1 some extent they repeat it at argument. The first is they said
2 that evidence beyond laws cannot be considered. Well, that's
3 not what *Bruen* did at all. *Bruen* considered contemporaneous
4 legal treatises. It considered modern law review articles. It
02:17PM 5 even considered reports from the Freedmen's Bureau during the
6 reconstruction era. Moreover, plaintiff seems to suggest that
7 evidence from before the founding or after 1868 cannot be
8 relied on at all.

9 Now, what *Bruen* said is that evidence from those
02:17PM 10 time periods cannot be given much weight, whereas, contrasted
11 with laws from the founding and brief construction that
12 contradict that. But in this case, as explained before, there
13 is no contradiction because there was no dispute as to the
14 constitutionality of sensitive places laws.

02:18PM 15 Similarly, plaintiffs in their briefing said that
16 territorial and local restrictions cannot be relied upon.
17 Well, again that's not what *Bruen* said. Indeed, these laws can
18 reflect the public understanding of the scope of the Second
19 Amendment. *Bruen* said nothing about local ordinances, and it
02:18PM 20 discounted territorial restrictions only because they
21 contrasted with the overwhelming evidence permitting carry
22 outside the home.

23 Finally, plaintiffs appear to say that there is some
24 percentage of the population that needs to be met in order for
02:18PM 25 a relevantly historical analog to fit within the nation's

1 historical tradition. But *Bruen* talks nothing of thresholds.
2 It only says laws which governed less than 1 percent of the
3 American population should be given little weight where they
4 contradict the overwhelming evidence of other more
02:19PM 5 contemporaneous historical evidence.

6 I think with those broad outlines of the case, we
7 would like the opportunity to go provision by provision. And I
8 think some of the themes will come out through that.

9 THE COURT: You may.

02:19PM 10 MR. MEYERHOFF: Thank you, Your Honor.

11 First, turning to the places of worship provision,
12 that's Subsection (a)(22), the State has identified numerous
13 historical analogs. We identify a Georgia analog from 1870 at
14 Compendium Exhibit 74; a Texas 1870 law at Compendium
02:19PM 15 Exhibit 77; a Missouri law from 1875 at compendium Exhibit 92;
16 and numerous other ones in our opposition at pages 12 through
17 13.

18 I think it bears repeating the discussion of
19 temporality. Plaintiffs appear to say that because these laws
02:19PM 20 were either after 1868 or perhaps because they were too far
21 from the founding, they can't be considered as historical
22 analogs. That's not what *Bruen* says. And, in fact, as to the
23 point they raised previously, the Ninth Circuit in both *Alaniz*,
24 which came out in 2023 and is cited in our brief, and in *Baird*
02:20PM 25 considered 19 Century evidence. In fact, the Court in *Alaniz*

1 found a historical tradition to be, quote/unquote,
2 "well-established" based on only 19th Century laws.

3 Moreover, to take a step back, once the State has
4 identified relevantly similar historical analogs, the Court in
02:20PM 5 *Bruen* has not -- did not decide what "relevantly similar"
6 meant. But what they did say was one possible indication, and
7 the one they used in the *Bruen* case, was whether there were
8 comparable burdens and comparable justification. Well, in this
9 case, the burdens and justifications are the same. The burden
02:20PM 10 is the prevention of carriage inside of houses of worship.
11 And, indeed, the justification is the same to prevent violence
12 and intimidation to allow people to worship in peace.

13 And, in fact, California's law is less burdensome
14 than many of these historical analogs we've identified.
02:21PM 15 Because again, it allows houses of worship that wish to permit
16 permittees to bring firearms in to do so, provided they put up
17 a sign.

18 Now, to situate that relevantly similar historical
19 analog within the historical tradition, we point to numerous
02:21PM 20 other states, territories, and localities that have laws
21 prohibiting carrying in houses of worship. We cite those at
22 our opposition at 12 and 13.

23 To make one other note about temporality, the Court
24 in *Heller* said that schools were sensitive places. The Court
02:21PM 25 in *McDonald* repeated that. And then the Court in *Bruen*, again,

1 discussed how Government buildings and schools were sensitive
2 places. It is worth noting that the first state statutes
3 prohibiting guns in schools emerge in the second half of the
4 19th Century. For example, Vermont law that emerges towards
02:22PM 5 the end of the 19th Century.

6 So I think when you consider how *Bruen* and *Heller*
7 have defined sensitive places, that can't really be squared
8 with plaintiffs' argument that only laws at the founding
9 matter.

02:22PM 10 In terms of the historical tradition, we've also
11 provided expert declarations from Patrick Charles and
12 Dr. Rivas, both of whom recount the numerous restrictions on
13 houses of worship.

14 Now, I will note that plaintiffs discuss these laws
02:22PM 15 that require -- that required individuals to bring their
16 firearms to church. However, our historical experts have
17 contextualized those laws and explained that in northern
18 states, they were in response to organized Native American
19 attacks. And in southern states, they were in response to a
02:22PM 20 fear of slave insurrections. Both of those rationales do not
21 sound, and as Your Honor discussed, the individual right to
22 bear arms but more in a collective militia action.

23 In any event, they merely reflect that under the
24 public understanding of the Second Amendment at the time,
02:23PM 25 governments had the ability to regulate the carriage of

1 firearms in houses of worship.

2 We also have case law citations to *Goldstein* and to
3 *Maryland Shall Issue, Incorporated*, both of which are
4 post-*Bruen* cases that have denied preliminary injunctions to
02:23PM 5 restrictions on houses of worship.

6 I think it makes sense to next turn to public
7 gatherings and special events. That's Subsection (a)(10).
8 We've identified numerous historical analogs. Here again, the
9 1786 Virginia law at Compendium Exhibit 31; the 1792

02:23PM 10 North Carolina law at Compendium Exhibit 33; 1831 law from
11 Louisiana, Compendium Exhibit 44, and many others.

12 Again, if we consider relevant similarity and we
13 look at comparable burden and comparable justification, the
14 burden from California's law is, in fact, much less than the
02:24PM 15 laws -- than these historical analogs from the relevant time
16 period. It's so, because California's law applies only to
17 permitted special events and public gatherings and, as we
18 discussed before, contains an exception for those who are
19 passing through.

02:24PM 20 Contrast with many of these historical laws which
21 contain no exception for passing through and which applied to
22 all public gatherings, not merely permitted ones. And, indeed,
23 if we think to the 19th Century, there may well have been no
24 permitted events. Every public gathering may have occurred
02:24PM 25 without a permit, given the sophistication of the government at

1 the time. So, in fact, California's law is much less
2 restrictive than these historical analogs.

3 Now, these fit within the historical tradition
4 because there is a tradition in England going back to the
02:24PM 5 14th Century of restricting firearms at fairs and markets.

6 Now, in plaintiffs' briefing, they said that English
7 history was irrelevant and can't be considered. That's not
8 what *Bruen* said. *Bruen* said that English history can't be
9 considered when there's no evidence that that tradition crossed
02:25PM 10 the Atlantic or existed at the time of the founding. But here,
11 both the Virginia law and the North Carolina law I just
12 mentioned were closely patterned on the Statue of Northampton.

13 So far, from there being no evidence that the
14 tradition made it, there's strong evidence that that tradition
02:25PM 15 made it across the Atlantic.

16 We've also cited numerous other state territorial
17 and local laws at page 18 and 19 in our opposition which
18 restrict public gathering. If the Court looks at the specific
19 quotations from those at page 18 and 19, you'll see the
02:25PM 20 breadth. They list specific places, but in many cases they say
21 "and any other public assembly."

22 Again, repeating a point I mentioned earlier, we
23 point to numerous court cases at page 20 of our opposition and
24 21 -- *Andrews*, *Hill*, *Owen*, *Shelby*, *Alexander*, *Maupin*, *Pigg*, and
02:26PM 25 *Wynne* -- all of which upheld these laws which contained broad

1 restrictions on public carry at public gatherings. And,
2 indeed, if we look at where the cases upheld these
3 restrictions, they even upheld them at Fourth of July barbecues
4 at a mill where workers and customers went to.

02:26PM 5 We also have Patrick Charles's expert declaration,
6 as well as the declaration of Adam Winkler, a leading Second
7 Amendment historian, both of whom discuss how these special
8 event and public gathering restrictions fit squarely within
9 America's tradition of firearms regulation.

02:26PM 10 If we can move on to Subsection (a)(9), locations
11 where liquor is sold for consumption on-site. Now, the State
12 has identified historical analogs, dead-ringer historical
13 analogs. The historical twin that *Bruen* said expressly it is
14 not required. We've identified them anyway: An 1853 New
02:27PM 15 Mexico law, that's at Compendium Exhibit 58; an 1870
16 San Antonio restriction, that's at Compendium Exhibit 76; and
17 an 1890 Oklahoma law, that's at Compendium Exhibit 144.

18 Now, these laws -- the burden and justifications are
19 the same. They're certainly relevantly similar. Now, do they
02:27PM 20 fit within the historical tradition? We certainly put forward
21 evidence to that effect. We have a historical tradition, not
22 simply of those dead ringer laws, but also of similar laws that
23 evince a concern with the mixing of alcohol and firearms.

24 So we have prohibitions on sales of alcohol to
02:27PM 25 militia men, prohibitions of sales of alcohol within a certain

1 distance of militia. We have laws prohibiting firearms
2 carriage by intoxicated people, and we have the declarations of
3 Professor Mancall and Professor Winkler, both of whom discuss
4 the dangers of mixing firearms and alcohol.

02:28PM 5 Now, again, I think this goes back to a
6 misapplication throughout plaintiffs' briefing. They say that
7 if we haven't identified a dead ringer, that the modern
8 regulation cannot survive. Well, in many, if not most of these
9 cases, we have identified that dead ringer, but we're not
02:28PM 10 required to. And, indeed, we've situated these laws within the
11 nation's historical tradition. I'd also note that the
12 Second Circuit in *Antonyuk* -- the First Circuit Court to deal
13 with sensitive places provisions -- upheld a similar provision.

14 THE COURT: Mr. Meyerhoff, why don't we give our
02:28PM 15 court reporter a break, and then we'll pick back up, okay?

16 MR. MEYERHOFF: Thank you, Your Honor. Of course.

17 THE COURTROOM DEPUTY: All right.

18 **(Recess from 2:28 p.m. to 2:42 p.m.)**

19 THE COURT: All right. Mr. Meyerhoff, please
02:42PM 20 proceed, sir.

21 MR. MEYERHOFF: Thank you, Your Honor. With your
22 indulgence, I'd like to continue proceeding provision by
23 provision.

24 I would like to take a step back for a second. I
02:42PM 25 don't want to lose the forest for the trees here. If we take a

1 step back, when we look at *Heller*, *Heller* rejected the idea
2 that the -- that a locality jurisdiction could totally ban
3 firearms. And it left open the question of whether firearms
4 could be confined to the home effectively. And *Bruen* answered
02:43PM 5 that question. It said that firearms cannot -- the right -- a
6 government cannot confine the right to bear firearms to the
7 home.

8 *Bruen* also said, and is part of the reasoning for
9 that, said, quote:

02:43PM 10 "A person is a good deal more likely to be
11 attacked on a sidewalk in a rough neighborhood than
12 in his apartment."

13 And it was echoed by Your Honor's opinion in *Boland*
14 which discussed that ordinary people feel the need to possess
02:43PM 15 handguns because, quote, "they live in high-crime
16 neighborhoods," end quote, or "because they must traverse 'dark
17 and dangerous streets.'"

18 Now, as Senate Bill 2 reflects that, it permits
19 individuals to traverse the streets on their way to places, and
02:43PM 20 it doesn't, unlike the law in the *Bruen* case or, as plaintiff
21 suggests, criminalize the possession of firearms in all crowded
22 places. Indeed, if a permit holder walks up to a crowded
23 sidewalk and there's many people there, they're not required to
24 turn around and walk in the other direction.

02:44PM 25 So I think in terms of -- it's important to think

1 about what does "public carry" mean? That's what *Bruen* talks
2 about. It talks about public carry.

3 Now, *Bruen* doesn't define that, but in its
4 discussion of public carry, at the same time it acknowledges
02:44PM 5 that there are numerous -- at least five examples of sensitive
6 places where, notwithstanding the fact that firearms cannot be
7 confined to the home, individuals cannot carry there. And it
8 talks about new and other analogous sensitive places. So I
9 think that's just a -- before we move into more sensitive
02:44PM 10 places, I just want to emphasize that point.

11 So if we look at Subsection (a)(8), public transit,
12 we've identified historical analogs in the form of broad public
13 gathering laws that we mentioned previously, as well as school
14 laws that are undisputed by *Bruen*. And those school laws are
02:45PM 15 motivated by the protection of a vulnerable population:
16 children. Many -- as we put in the record, many public school
17 children take public transportation to work. We've also
18 identified as a historical analog Government building laws.
19 Those are recognized again by *Heller* as being settled.

02:45PM 20 I think there's two points to note here. It seems
21 as though plaintiffs are requiring a dead ringer in the public
22 transit space or historical twin. That's not what *Bruen*
23 requires. The other thing to note -- and this is where the
24 expert evidence is particularly important -- is that we've
02:45PM 25 presented evidence for Professor Salzmann and Professor Rivas

1 that demonstrate that public transportation did not exist in
2 the form it is today or any meaningful form until the
3 20th Century.

4 We also provided evidence in their declarations that
02:45PM 5 private railroad companies, which did operate railroads in the
6 19th Century, restricted the carriage of firearms. It would be
7 puzzling indeed if the mere fact that the Government has taken
8 on a service, which private companies did in the 19th Century,
9 could expand the scope of the Second Amendment.

02:46PM 10 Indeed, if in the 19th Century -- 18th or
11 19th Century, if you ask an individual, you know, "Can you
12 carry on a railroad?" they would have said, based on the
13 evidence we put forward, "Probably not."

14 And so the mere fact that the Government is now
02:46PM 15 providing that service, it would be puzzling if that were to
16 expand the scope of the Second Amendment. We've identified the
17 *Kipke* case which denied a preliminary injunction for public
18 transit. We also cited the *Marique* case in our briefing, which
19 is a government building case. It's an NIH case. Now, NIH
02:46PM 20 provides services today that perhaps the Government did not
21 provide in the 19th Century, but nonetheless, the Government
22 building exception applies.

23 Now, I think it's important in concerning public
24 transit, for example, to think about the idea of silence in the
02:46PM 25 record. And as the Second Circuit in *Antonyuk* noted,

1 interpreting from silence is risky. I think one of the places
2 where our expert testimony is particularly helpful is that it
3 explained the silences in the record. So in this case, for
4 example, we put forward strong evidence that there was no
02:47PM 5 public transit, and so the search for 18th or 19th Century
6 historical twins or dead ringers would be fruitless, but that
7 does not mean that those laws do not fit -- those modern
8 regulations do not fit within the nation's tradition of
9 firearms regulation.

02:47PM 10 THE COURT: Mr. Meyerhoff, let me ask you a few
11 questions about public transit.

12 MR. MEYERHOFF: Yes, Your Honor.

13 THE COURT: I'm just trying to understand how I
14 apply this analysis to these facts. And I guess there has to
02:47PM 15 be hypothetical facts because they're not in the record. But
16 I've taken public transportation in and around Los Angeles, and
17 I've taken it in and around Santa Ana. I don't know if you've
18 ever been in L.A. or Santa Ana after 6:00 o'clock, but it's
19 quite a criminal element. Some of it being homeless are out
02:48PM 20 and about.

21 And candidly, I'm not a tiny guy, but I feel quite
22 unsafe. And I do know that court staff, both in Los Angeles
23 and in Santa Ana, going to and from those public transport
24 areas, transit areas, they've been assaulted and attacked, and
02:48PM 25 some knife has been brought out.

1 I think the point -- what I'm trying to say is don't
2 they have the right to defend themselves? You know, I have to
3 take public transit to get to work to make a living, and this
4 day in age, the government, I don't think they can protect us
02:49PM 5 at all times, at all places, nor can police. And especially
6 with the climate and some of our cities and municipalities of
7 defunding the police, people are not safe going to use public
8 transit meaningfully. Tell me why they shouldn't be able to
9 defend themselves, you know -- and by carrying -- if they can
02:49PM 10 meet the qualifications for carrying a concealed permit.

11 MR. MEYERHOFF: I think it's important to note at
12 the outset -- I believe it's Section 25605 -- you had mentioned
13 the State would have the last word, and so I can -- I will
14 confirm that with my colleagues, but I believe that section of
02:49PM 15 the Penal Code provides as long -- when you're acting in
16 self-defense with a firearm, as long as you, you know, quickly
17 attempt to contact law enforcement -- I can provide the exact
18 citation when I come back up to the podium, but there is an
19 exception in California law for self-defense. So I think that
02:50PM 20 addresses your concern.

21 THE COURT: Doesn't -- because I'm trying to
22 understand that. How do I know whether I'm going to be
23 assaulted or I'm going to need it and the law says I can't
24 carry it? So it would seem to me what you're saying is, okay,
02:50PM 25 I can violate the law, and if I have a problem and I have to

1 use my firearm, I'm not going to be prosecuted? Is that what
2 you're saying? Or am I missing your response?

3 MR. MEYERHOFF: I mean, I think ultimately the
4 prosecution decisions are left up to local jurisdictions. I'm
02:50PM 5 just pointing to a section of the statute that does provide a
6 self-defense exemption. I think the broader point is in these
7 discussions about whether firearms should be allowed on public
8 transit.

9 Ultimately, state legislatures have the authority to
02:51PM 10 make these policy decisions unless they offend the Second
11 Amendment. And so an individual citizen or Your Honor may
12 disagree with the California's legislature's decision to
13 restrict the carriage of firearms on public transit.

14 THE COURT: But it's not my place. And I -- if I'm
02:51PM 15 understanding you, I can't tell the legislature how to do their
16 job, but I can say if you're violating the Constitution. And
17 so that goes back to some of my earlier questions: Isn't there
18 a natural right codified in the Second Amendment that you have
19 the right to carry a firearm, in this case, a handgun, to
02:51PM 20 protect yourself from harm?

21 I'm just trying to understand how the Second
22 Amendment, in the sensitive places, in practical reality work.
23 And some of these sensitive places, I don't have a lot of
24 firsthand experience. I can't really identify with it. But I
02:52PM 25 can tell you, depending on the day of time [sic], I am nervous

1 going to and from public transit areas. And I can certainly
2 understand how a person would want to carry a handgun to
3 protect himself or herself.

4 And if I had certain individuals who are smaller,
02:52PM 5 like a five-three young woman and she's going at that late
6 hour, I would want her to be able to protect herself. I don't
7 feel comfortable saying, "You can't protect yourself. You got
8 to just take your risk." And it just seems to me that the way
9 SB 2 is working is you can't -- you can't carry your firearm to
02:53PM 10 and from your work or you're going to have to leave early when
11 the risk of attack or assault are low. Am I missing something?
12 I mean, you can -- please feel free to tell me if I'm
13 misunderstanding how the statute works.

14 MR. MEYERHOFF: Yes, Your Honor. So I think the
02:53PM 15 first question is you're discussing it, and I think it's the
16 appropriate question, what is the -- doesn't one have a Second
17 Amendment right to bear arms for self-defense? And the Court
18 in *Heller* acknowledged that in the home, and the Court in *Bruen*
19 said you have the right to carry outside of the home. But in
02:53PM 20 the same breath, it acknowledges you have the right to public
21 carry -- and again, it didn't define what "public carry" means.
22 It can't mean all places open to the public because in the same
23 breath, it describes courthouses which are -- foundationally
24 and constitutionally they are fundamentally public places. And
02:54PM 25 so, obviously, when the --

1 THE COURT: I feel -- I feel very safe in this
2 courthouse. And I don't have any court security in here
3 because it's a secured -- it's a civil matter. But for my
4 criminal matters I've got a team of marshals, and then I've got
02:54PM 5 court security officers. I've got buttons here (indicating).
6 At any point -- if you want me to test it, I'll show you --
7 they'll come locked and loaded ready to go. An entirely
8 different sense of comfort and security. I have the opposite,
9 they're never leaving me alone. Whereas, when I'm outside the
02:54PM 10 courthouse going to the train station or going to the bus
11 station, which is the main terminal right by the train station,
12 or in Downtown Los Angeles, trying to take some of the buses to
13 go to different areas, you know, I don't feel safe.

14 MR. MEYERHOFF: Well, to answer your most pressing
02:55PM 15 question, no, I do not think you need to test out the button on
16 me, at least.

17 I think to address sort of two of the points you
18 brought up, ultimately, we are talking about policy choices.
19 And so there are many courthouses throughout the country that
02:55PM 20 do not provide security. In fact, we've cited materials in our
21 briefing that show that up until the 2000s, most schools did
22 not provide security or even armed security. And so those are
23 policy choices that the individual legislatures of those states
24 have made.

02:55PM 25 And so the State of Idaho may decide to not prohibit

1 carriage of firearms in sensitive places like public transit.
2 Certainly those five sensitive places are not requirements for
3 the State, you know, it didn't say states must secure federal
4 courthouses, they must secure schools, they must secure polling
02:56PM 5 places. Indeed, most polling places, as far as I understand
6 them, are not secured by armed guards or panic buttons or
7 anything like that.

8 And I think the Supreme Court, including many
9 justices on the Court in *Bruen* have often extolled states as
02:56PM 10 the laboratory of democracy. So policy choices are made there.
11 California has made a different set of policy choices and
12 people may be upset about any one of those policy choices. But
13 unless that policy choice offends the Second Amendment, their
14 address is to the legislature, through petition, through
02:56PM 15 voting.

16 So I think that is sort of the answer to the
17 question that you are raising. I'd like to address a slightly
18 different point that I think you brought up and plaintiffs
19 brought up. They attack our theory of the case, our theory of
02:57PM 20 sensitive places, and they say they want all crowded places to
21 be sensitive places. Again, we're not arguing that Los Angeles
22 is a crowded place or San Francisco is a sensitive place, as
23 New York tried to do at argument in *Bruen*.

24 Their theory of the case or their theory of
02:57PM 25 sensitive places is both underinclusive and ahistorical. So

1 they say government buildings, schools, courthouses,
2 legislative assemblies and polling places, those are sensitive
3 places because they're secured by armed guards. Federal court
4 houses may be an example of that. But as we said before, many
02:57PM 5 schools don't have armed guards. Many DMV offices don't have
6 armed guards. Many polling places don't have metal detectors.

7 At the time, we cite in our brief that the State --
8 the U.S. Capitol had one security guard who may have been a
9 groundskeeper through the 19th Century. The metal detectors
02:57PM 10 didn't exist in the capital until the 1983 bombing, or at least
11 generally in the capitol. The senate chamber had it slightly
12 earlier because sensitive places then and today don't
13 necessarily have those features.

14 It's also underinclusive because -- I don't know if
02:58PM 15 you're a Dodger's fan, but if you go to Dodger Stadium today,
16 they have metal detectors. That is a private place. I believe
17 they also have security, some of which are probably armed. So
18 that --

19 THE COURT: They also have a lot more LAPD because
02:58PM 20 of some of the terrible tragic incidents that have happened.

21 MR. MEYERHOFF: That's correct. And I will note
22 that Justice Roberts, in the *Bruen* argument, appeared to assume
23 that, of course, stadiums would be sensitive places perhaps due
24 to their crowded nature. He didn't say all crowded places are
02:58PM 25 sensitive, but that was certainly a factor he considered in

1 opining that sensitive places appeared -- stadiums appeared to
2 be sensitive places.

3 If I may return to the provision-by-provision
4 analysis. So we discussed public transit. Turning to
02:59PM 5 Subsection (a)(12) and (13), we've identified numerous
6 historical analogs, including Compendium Exhibit 60, the
7 restriction at Central Park; Compendium Exhibit 67, the
8 restriction at Prospect Park; Compendium Exhibit 83, the
9 restriction at Golden Gate Park, and many other municipal
02:59PM 10 restrictions.

11 Again, when we discuss expert testimony, in the role
12 of expert testimony, we put forward evidence from leading
13 historians on the topic that -- contrary to plaintiffs'
14 claim -- that Boston Common was like a park, it was not. And
02:59PM 15 public parks, as we understand them today, only emerged in the
16 second half of the 19th Century. The historical analysis that
17 we identified, it follows closely in time to those merely
18 contemporaneously. And we put forward declarations from
19 Professor Young and Professor Glaser to that effect.

03:00PM 20 Similarly, with state parks, we identify Compendium
21 Exhibits 198 through 200, as well as Professor Glaser's
22 surrebuttal declarations at Exhibit 1 through 15, numerous
23 state park restrictions from California, Connecticut, Kansas,
24 Michigan, New York, across the country.

03:00PM 25 Moreover, the burdens and justifications of the

1 modern regulation and the historical regulation, which the
2 Court in *Bruen* said determines whether they're relevantly
3 similar are the same, a flat ban to protect parks as places
4 that propose relaxation and recreation.

03:00PM 5 The other thing to note, of course, is that
6 Exhibit 201, we point out that close in time to the founding of
7 national parks, there was a ban on firearms in federal parks
8 that lasted for almost 70 years. That's at Compendium
9 Exhibit 201.

03:00PM 10 We also cite the *Antonyuk* case and *Kipke* case, both
11 of which are post-*Bruen* and uphold restrictions at parks, both
12 state and/or municipal.

13 Turning to Subsection (a)(7), which is the
14 restriction on hospitals. We've identified numerous historical
03:01PM 15 analogs that restrict carriage of firearms at places of
16 educational and/or scientific purposes, and 1870 Texas law at
17 Compendium Exhibit 77; 1874 at Missouri; 1889 at Arizona.
18 That's at -- 1889 Arizona law, that's at 138.

19 Again, I think it bears repeating that *Heller* and
03:01PM 20 *Bruen*, which recognize schools as sensitive places, we don't
21 see the emergence of state laws prohibiting firearms in schools
22 until the exact same time period. So plaintiffs' argument
23 about "Oh, these come too late," both don't reflect the *Bruen*
24 analysis we discussed earlier where laws after reconstruction
03:01PM 25 can be considered or during reconstruction. It also doesn't

1 reflect the Supreme Court's own jurisprudence on sensitive
2 places.

3 The Second Circuit in *Antonyuk* makes a good point
4 which is obviously the Second Amendment is ratified in 1868.
03:02PM 5 It doesn't mean that in 1869 the voters and legislatures have a
6 completely different conception of the Second Amendment. In
7 fact, the voters who approve these laws or the legislatures may
8 have been the exact same voters and legislatures who ratified
9 the Fourteenth Amendment.

03:02PM 10 So clearly these close-in-time restrictions are
11 relevant particularly when we consider the Court credited 1650s
12 restrictions in Maryland as to legislative assemblies and
13 finding those places were settled.

14 In terms of hospitals, we also identified analogs in
03:02PM 15 schools and colleges. There's the presence of vulnerable
16 populations. The burdens and justifications are the same in
17 both. There are bans on carriage and they prevent the
18 disruption of scientific and educational purposes and protect
19 vulnerable populations.

03:02PM 20 Again, we put forward evidence from leading
21 historians, Dr. Fissell and Dr. Kisacky, who explain the modern
22 hospital did not exist in the form we understand it with
23 sensitive equipment and teaching facilities until the 20th
24 Century.

03:03PM 25 Again, many of these experts -- *Bruen* countenanced

1 when there is a dramatic technological chain or unprecedented
2 societal concerns, the Court should apply a more nuanced
3 approach. One of the ways the nuance approach comes into
4 effect is when there is a reason to explain the silence on why
03:03PM 5 there may not have been hospital laws in 1791. Indeed,
6 practice, custom, private rules, which we talked about in the
7 railroads context as well, are relevant in determining that
8 historical tradition.

9 Turning to libraries, zoos, and museums, at (a) (17)
03:03PM 10 and (a) (20), again, we identified those historical analogs for
11 scientific and educational purposes throughout the 19th
12 Century. We also identify the restrictions in schools and
13 colleges, the presence of education and -- presence of
14 children, both are relevantly similar. We have comparable
03:04PM 15 burdens and comparable justifications. And we point to the
16 declaration of Leah Glaser, who talks about these are places
17 where children gather.

18 We also point to the declaration of Professor
19 Brewer. And she cites to four restrictions on carrying and
03:04PM 20 keeping firearms on campuses, at Yale College, the University
21 of Georgia, the University of North Carolina, and the
22 University of Virginia.

23 Now, these technically may not be statutes, but
24 we're not arguing that they are the historical analogs. Rather
03:04PM 25 we're arguing this evidence as well as our expert evidence and

1 other secondary sources defines the historical tradition that
2 *Bruen* talks about. So we are required to identify a relevantly
3 similar analog or analogs and place those within the historical
4 tradition.

03:05PM 5 And, indeed, in *Jones v. Bonta*, which we didn't cite
6 in our briefs, but which was issued on December 8th in the
7 Southern District of California, that's a 2023 WL 8530834, at
8 page 9, the Court said:

9 "Contrary to plaintiffs' assertions,
03:05PM 10 defendants do not conflate these university rules
11 with laws, but use them to demonstrate the general
12 understanding during the relevant historical
13 period."

14 Now, *Jones* involved a challenge to California's
03:05PM 15 restriction on the purchase of certain firearms by 18- to
16 20-year-olds, but the point remains the same.

17 Turning to Subsection (a)(11), we're looking at
18 playgrounds. We identify schools as strong historical analogs.
19 They are relevantly similar. the burdens and justifications
03:06PM 20 are the same: no carriage of firearms is the burden; the
21 justification and protection of the children. Again, our
22 declarations help explain the particular silence: Why were
23 there no restrictions on playgrounds at the founding?
24 Playgrounds did not exist in the founding era. And
03:06PM 25 additionally, they were often -- later they were often found

1 within schools and parks.

2 I think it's important to stop here for just a
3 moment and discuss, for example, public transit. Plaintiffs
4 identify -- they say there was public transit, and they
03:06PM 5 identify a single 1725 South Carolina example of public
6 transit. We present evidence from Dr. Rivas to show that
7 that's not really a relevant example. But more to the point,
8 and this is, again, a point that *Antonyuk* raises -- the Second
9 Circuit in *Antonyuk* raises. And I think it's applicable here.

03:06PM 10 They point out that there may be a variety of reasons why a
11 legislature or a municipality may have chosen not to regulate a
12 particular location, and they provide the example of a town
13 that has a single daycare.

14 Now, there may be a variety of reasons why the State
03:07PM 15 did not pass a law or locality did not pass a law addressing
16 that daycare. One of the reasons may have been that daycare
17 had its own private rule, and so it was considered unnecessary.

18 Indeed, legislatures, we would hope, are seeking to
19 address problems and provide solutions to them, not find
03:07PM 20 solutions and then identify problems. And so I think
21 interpreting silence as meaning that there's a countervailing
22 tradition is risky, because that's not what it means. Indeed,
23 that's what the Second Circuit found.

24 We also have restrictions on playgrounds at a
03:07PM 25 Subsection 11, that *We Are Patriots* case which we cite in our

1 brief from New Mexico refuse to enjoin those restrictions on
2 playgrounds.

3 If we look at (a)(15), (a)(16) and (a)(19) -- those
4 are casinos, stadiums, and amusement parks -- we identify
03:08PM 5 numerous historical analogs restricting carriage of firearms in
6 places of amusement and social gathering. We identify an 1816
7 New Orleans law at Compendium Exhibit 38 that restricts
8 carriage in public ballrooms, an 1871 Texas law at Compendium
9 Exhibit 80 that restricts assemblies for amusement, an 1889
03:08PM 10 Arizona law at 138 that restricts circuses, a 1903 Montana law
11 where -- which restricts where persons are assembled for
12 amusement.

13 Again, for these institutions, a more nuanced
14 approach is required because these types of places did not
03:08PM 15 exist at the founding. I mean, for example, casinos were
16 largely regulated out of existence until the second half of the
17 20th Century. And as I mentioned before, Justice Roberts, in
18 oral argument in *Bruen*, suggested strongly that he believed
19 that stadiums would classify as sensitive places.

03:09PM 20 The May plaintiffs specifically also challenge the
21 parking lot restrictions or certain of SB 2's provisions
22 restrict carriage in parking lots as well. We have addressed
23 this in our briefing. We have identified dead-ringer
24 historical analogs or at least very closely similar.

03:09PM 25 There's a 1776 Delaware constitutional provision at

1 Compendium Exhibit 28, which outlaws battalions or companies
2 from coming within a mile of polling places during the
3 election.

4 We identify an 1870 law which prohibits -- which
03:09PM 5 restricts the carriage of firearms within a half-mile of a
6 place of registration. Indeed, these laws -- the burden is
7 less severe because none of California's restrictions cover
8 5,280 feet or half of that. And the justification is the same,
9 to prevent the disruption that firearms would cause.

03:10PM 10 I think it's important to look additionally at a
11 number of cases. I would recommend to you most prominently the
12 D.C. Circuit's opinion in 2019 in the class case which we cite
13 in our brief. In class, the D.C. Circuit found the same
14 security interest which remit regulation of firearms in a
03:10PM 15 Government building, permit regulation of firearms on the
16 property surrounding those buildings. We can certainly
17 understand why in legislative assemblies and courthouses.

18 We would not want to restrict firearms within them,
19 but someone standing on the sidewalk 15 feet away, the same
03:10PM 20 logic applies to the sensitive places restrictions we've
21 identified. And, indeed, both pre-*Bruen* and post-*Bruen*,
22 numerous courts have upheld buffer zones and parking lot
23 restrictions.

24 We identify the *Bonidy* case, the *Dorosan* case.
03:10PM 25 Those are pre-*Bruen*. We identified the post-*Bruen* Maryland

1 case. And we also identified a number of school zone cases.
2 The federal Gun-Free School Zones Act provides for 1,000-foot
3 buffer around schools.

4 We cited numerous District Court cases -- *Walters*,
03:11PM 5 *Allam*, *Lewis*, pre- and post-*Bruen* that uphold those
6 restrictions.

7 I'd like to turn briefly to (a)(23), which is the
8 restriction on financial institutions. We've identified
9 historical analogs that are relevantly similar in the form of
03:11PM 10 government buildings and courthouses in the 18th and 19th
11 Century. We presented evidence from a leading financial
12 historian, Professor Murphy, who demonstrates that banks did
13 not hold the place in American society they do today. There
14 was no mass commercial banking, financial institutions or the
03:11PM 15 province of a few elite individuals and, indeed, some of the
16 functions that banks hold today, including notaries public were
17 actually resided in courthouses in the 18th and 19th Century.

18 And, indeed, the other concern which motivates and
19 which would go to the justification, the justification for
03:12PM 20 restrictions on government buildings and courthouses is clearly
21 the disruption of American civic life. In the same way, banks
22 and financial institutions occupy a central place in American
23 life today. And again, considering the dramatic technological
24 change, we can consider the more nuanced approach which allows
03:12PM 25 us to analogize at a higher level.

1 I'd also note that financial institutions fits
2 squarely within airports. They are places that are sites of
3 organized group violence. And, in fact, just as airports and
4 airplanes have been the site of political terrorism, banks have
03:12PM 5 also been the site of political terrorism, both to send a
6 message as well as to collect resources for terrorist
7 organizations. Thus, the Ninth Circuit, in its *Davis* opinion
8 in 2008 have little trouble finding that airports were
9 affirming -- had little trouble affirming a conviction for
03:13PM 10 carrying a firearm in an airport.

11 I'd like to turn to the private property provision,
12 (a)(26). Now, (a)(26) is unique in our argument because there,
13 we have made what we see as a compelling Stage 1 argument that
14 plaintiffs' proposed course of conduct is not covered by the
03:13PM 15 plain text of the Second Amendment. Put simply, the Second
16 Amendment does not extend to private property.

17 As we discussed in *Heller*, *Heller* said you cannot
18 ban guns in the home. It left open the question about
19 confining them to the home. *Bruen* answered that question. But
03:13PM 20 it did not define what "public carry" meant.

21 Now, plaintiffs argue that "public carry" means
22 "includes private property open to the public." They believe
23 in some sense -- their argument relies on the fact that in some
24 sense the Second Amendment extends to private property.

03:14PM 25 Without some sort of conclusion to that effect, their course of

1 conduct does not implicate the Second Amendment. And frankly,
2 respectfully, if a court is to make a determination that the
3 Second Amendment extends to another's private property, that
4 decision should come from the highest court in the land.

03:14PM 5 *Bruen*, as we understand it, the Second Amendment was
6 enshrined within the scope. It was understood at the time.
7 Now, there's no evidence that carriage on private property
8 during the founding or reconstruction eras on another's private
9 property during that time period was derived from some Second
03:14PM 10 Amendment right as opposed to state property law.

11 Additionally, on the private property provision,
12 plaintiffs lack Article III standing. There is no state action
13 that is fairly attributable to their supposed injury here.
14 Shifting the means by which a property owner gives consent is
03:15PM 15 not state action.

16 Now, plaintiffs say that this court does not enjoin
17 this provision. It will be the State deciding as a default
18 presumption who can enter and who cannot. But Your Honor,
19 that's true regardless of whether you enjoin this provision,
03:15PM 20 either as a default everyone will be permitted to carry on
21 private property -- private commercial property, unless the
22 owner consents, or no one will. But either way, that's a
23 decision, in their view, being made by the State. In reality,
24 it's not a decision being made by the State; it's a decision,
03:15PM 25 regardless of whether you enjoin the law or not, being made by

1 private property owners.

2 Now, at Stage 2 of the analysis, even if we proceed
3 there, the State would still be able to show that the law --
4 that this subsection fits within the nation's historical
03:16PM 5 tradition of firearms regulation. We've identified numerous
6 analogs including a 1721 Pennsylvania law at Compendium
7 Exhibit 17, a 1722 New Jersey law at Compendium Exhibit 18, and
8 five other historical analogs. Now, contrary to plaintiffs'
9 argument, these analogs do not apply only to hunting, they
03:16PM 10 apply broadly to private property.

11 Now, these historical laws fit within the nation's
12 historical tradition of firearms regulation, and, indeed, the
13 sanctity of private property. Other rights derived from the
14 Constitution do not extend on to another's private property.

03:16PM 15 And, indeed, it's likely that these historical restrictions
16 were just as broad, if not broader, than California's
17 challenged private property provision today. Because even
18 though these restrictions mention plantations and farms,
19 America, at the time, is a profoundly agrarian society. And so
03:17PM 20 it's likely that these provisions acted even more broadly in
21 restricting firearms carriage than these modern restrictions
22 do.

23 If I could briefly address the May plaintiffs' First
24 Amendment claim.

03:17PM 25 THE COURT: A lot of what you said -- I mean, it's

1 been helpful, but we've almost been going for two hours and I
2 still got to give everybody a round. So a lot of what you
3 said, it has been in the briefs. So I'm just trying to think
4 as time management, because I know the plaintiffs are going to
03:17PM 5 say, "Hey, listen, we spoke for about 25 to 30 minutes, and
6 you've been speaking for an hour and a half." I appreciate it.
7 I don't want you to feel bad. It's just now I think I got to
8 time manage this better.

9 MR. MEYERHOFF: Yes, Your Honor. Will we have an
03:18PM 10 opportunity to briefly respond?

11 THE COURT: Yes, you will.

12 MR. MEYERHOFF: Thank you. I appreciate it.

13 MR. BENBROOK: Few quick points of specific
14 responses to counsel's argument, Your Honor. First, counsel
03:18PM 15 suggests that, "Hey, under SB 2, people can traverse the
16 streets and sidewalks. So what's the big deal?" The big deal
17 is you can't go anywhere else. You can -- under these
18 restrictions. Because if you go to a parking lot to go to a
19 place that is, for example, a private business or a Government
03:19PM 20 building, you can't be in the parking lot with the firearm.

21 So the point is, *Bruen* repeatedly says there is a
22 general right to public carry. Not a right to carry on
23 sidewalks and streets, but a general right to public carry.

24 Relatedly, counsel found it significant that
03:19PM 25 Mr. Frank, for the May plaintiffs, said that mostly these

1 restrictions are -- fall within the private default rule, and
2 so again, kind of "What's the big deal with all the others --
3 all the other restrictions?" Well, that's not the test. It's
4 not a how burdensome is this in the whole?

03:19PM 5 If Your Honor takes each location one by one -- and
6 we do not concede as to all people that the private default is
7 the most onerous. All the ones we've chosen we believe offend
8 the Second Amendment. So we take each location one at a time.
9 And maybe I misheard or didn't hear, but it's -- to me, I think
03:20PM 10 counsel failed to address Your Honor's question of what's left.
11 He said, basically, I guess his answer is streets and
12 sidewalks.

13 Next, with respect to counsel's argument that *Heller*
14 and *Bruen* establish five sensitive places including a broad
03:20PM 15 category of Government buildings, I point Your Honor to
16 pages 11 and 24 of the reply brief where we respond to that
17 argument and note in reference to government building was a
18 reference to the subset of government buildings that have
19 previously been identified.

03:21PM 20 Counsel mentioned that it's significant that there
21 are -- is not much, if any, record of challenges to these few
22 sensitive locations laws or regulations that they've
23 identified. And perhaps the answer to that is because there
24 are so few of them, but also because, in fact, many of the
03:21PM 25 locations -- the so-called sensitive location regulations

1 they're talking about are actually codifications of the law of
2 affray and not sensitive location restrictions at all. They're
3 restrictions on carrying to terrify the public. And we'll get
4 to that in a second.

03:21PM 5 With respect to the contradiction point and how that
6 works, again, it's important to emphasize that *Bruen* itself
7 says that 18 -- 19th Century regulations can contradict the
8 founding era tradition when there is no regulation of the same
9 kind in the founding era. In other words, it says that when
03:22PM 10 the founders could have addressed it the same way subsequent
11 legislatures chose to but didn't, that's important evidence to
12 show that the new regulations are inconsistent with the Second
13 Amendment.

14 And I was trying to take notes with respect to the
03:22PM 15 very odd, confusing exchange Your Honor had with counsel about
16 the alleged self-defense exception.

17 I would ask counsel which number was it that you
18 were referring to so we can look at that?

19 And I won't be able to respond right here, but we
03:23PM 20 will.

21 THE COURT: While they're trying to find that, let
22 me ask you a bigger picture context. And maybe it's just
23 that's a problem that I've got to face, but the Supreme Court
24 in *Bruen* said there are sensitive places, and one of those
03:23PM 25 sensitive places are schools. And it just seems to me in this

1 day and age, a lot of our schools, there's not adequate
2 protection provided by police. And if you're dropping one of
3 your kids off at these schools or you're around the area when
4 one of these mass shooters -- because some of these horrific
03:24PM 5 shootings have happened at schools, Sandy Hook and others --
6 maybe the body count wouldn't have been so horrific if there
7 were several concealed carry permit holders around.

8 So here's my question. It's probably not a good
9 one. So if the Supreme Court says, "Even in these situations,
03:24PM 10 you know, you got to leave schools alone under our analysis,"
11 I'm thinking, well, the whole point of the Second Amendment is
12 so a person can protect himself, herself, and their loved ones.
13 How can you not protect yourselves in this day and age?

14 MR. BENBROOK: I agree, Your Honor. I'll start with
03:24PM 15 the caveat that I don't -- we have not raised a challenge to
16 schools or playgrounds. The May plaintiffs did challenge the
17 playgrounds, so counsel can address that. But one way of
18 looking at it, Your Honor, is while the State suggests that,
19 "Oh, *Heller* set aside -- identified schools as a sensitive
03:25PM 20 place," that is not ironclad, Your Honor. That was among the
21 so-called presumptively lawful regulations including sensitive
22 places that was referred to as a presumptively lawful
23 regulation.

24 But *Bruen* clarified in its discussion of sensitive
03:25PM 25 places that particular sensitive place restrictions, if they're

1 challenged, still need to satisfy the history test. So, I
2 mean, our case is not about schools. I agree with Your Honor.
3 But I would just offer that as a partial response.

4 THE COURT: So let's see if I can drill down on
03:26PM 5 that. The Supreme Court have said schools is a sensitive
6 place, but my point is schools are not safe. Our history shows
7 that they're not safe. Are you saying that under the *Bruen*
8 analysis, even though they recognize that exception, that you
9 can readdress whether you can have a concealed carry permit
03:26PM 10 holder at schools? I'm not talking about the students.

11 MR. BENBROOK: Right.

12 THE COURT: But teachers, parents -- parents aren't
13 allowed to roam around the school property. I found that out
14 the hard way once when I was trying to check up on my kids.
03:27PM 15 But certainly in the parking lots or waiting outside, as I
16 understand SB 2, you can't have a gun there.

17 MR. BENBROOK: Including parking lots, Your Honor,
18 which is particularly onerous.

19 THE COURT: Right. And what I'm trying to
03:27PM 20 understand is how do I analyze this when you have the Supreme
21 Court saying, in *Bruen*, that there are certain sensitive
22 places, schools being one of them, and we're not challenging
23 that, and then these other places, playgrounds where there's
24 children and centers, youth centers, why is that not within
03:27PM 25 this exception that the Supreme Court had been talking about?

1 MR. BENBROOK: Your Honor, I don't think I can add
2 much more than what I mentioned. To my -- again, the caveat
3 that we're not challenging here, my understanding is schools
4 are among the presumptively lawful but not ironclad. No one
03:28PM 5 can ever challenge this ever again. It has to satisfy the
6 history test. And at the risk of venturing into an area we're
7 not talking about, you know, one important theory or one
8 important aspect of that, perhaps the most important is the
9 analogs, the rules, the rules of the schools that the State
03:28PM 10 points to all arise in the context of strict *in loco parentis*
11 controls of the schools. While the students may have been
12 disarmed, the faculty and others were not.

13 THE COURT: Okay.

14 MR. BENBROOK: So moving on, Your Honor -- and
03:28PM 15 again, if counsel has identified that self-defense --

16 MR. MEYERHOFF: May I?

17 THE COURT: Please.

18 MR. MEYERHOFF: Penal Code Section 26045.

19 MR. BENBROOK: I'll ask my colleagues to look at
03:29PM 20 that. Thank you. Thank you, Counsel.

21 All right. Let's talk about Subsection 10, public
22 gatherings. We dispute the suggestion of the State that this
23 is not a big deal, this is not a big burden. We point out in
24 the brief that it is a significant restriction. It applies to
03:29PM 25 public meetings that require a permit. And many events do

1 require such a permit. We've identified them.

2 This is an important part of the briefing, though,
3 because a lot of the meat comes in there and gets repeated and
4 refers back, so I'm going to cover it.

03:29PM 5 Counsel talked about the churches, the rule of
6 requiring citizens to bring their arms to church, but I didn't
7 hear counsel address the requirements in Connecticut,
8 Massachusetts, Maryland, Rhode Island, and Virginia that we
9 cite, all requiring them to bring their guns to public
03:30PM 10 meetings. When there is evidence of a founding era requirement
11 to carry in public gatherings, it's impossible for the State to
12 meet its burden of showing the opposite tradition. In fact,
13 some of the State's declaration support us.

14 For example, the Rivas declaration, he details all
03:30PM 15 sorts of public meeting places in Philadelphia in the late
16 1700s and concludes at paragraph 34 that the City did not enact
17 weapon specific regulations for these places of public
18 assembly. And again, *Bruen* tells this, the absence of
19 regulations that the founders could have adopted but did not is
03:31PM 20 evidence that new regulations are not consistent with the
21 Second Amendment.

22 Otherwise, the State rolls out a set of laws that
23 it's using to justify in many of the other circumstances, and
24 we've covered extensively in the brief why the Statute of
03:31PM 25 Northampton should not -- is not a proper analog here.

1 So I want to focus on four that the State does and
2 focus on and that apply in many other settings. First is the
3 1786 Virginia law, Exhibit 31. This is very important. They
4 say that this is an example of a founding era, Northampton
03:31PM 5 statute that restricted carrying at public gatherings. But as
6 I read it in the details of the statute, the actual text shows
7 this was not a sensitive place regulation at all. It did not
8 distinguish between places since acting in terror of the county
9 was the main offense. It says:

03:32PM 10 "You may not go nor ride armed by day nor
11 by" -- "by night or day in fairs or markets or in
12 other places in terror of the county."

13 So to my reading, that's not a sensitive place
14 restriction. That says you cannot ride to terrorize the
03:32PM 15 people, and that's not challenged here.

16 The next, quickly, is the 1792 supposed
17 North Carolina law. We addressed this in the reply brief. But
18 I would add *Bruen* tells us at 142 S.Ct. 2145 that in *State v.*
19 *Huntley*, in 1843, North Carolina Supreme Court confirmed,
03:32PM 20 quote, "that the carrying of a gun for a lawful purpose per se
21 constitutes no offense." And again, accepting and reading it
22 to the -- limited to affray or terrorizing the people.

23 Third, 1820 New Hampshire law regarding parades.
24 The State's brief says a prohibited carry, quote, "near
03:33PM 25 parades." But the details show otherwise. It actually applied

1 only to noncommissioned officers who come on to parade, they
2 could not carry armed. Did not apply beyond them and did not
3 apply to the people watching the parade. It's more akin to
4 saying if you're going to be in a public performance, you can't
03:33PM 5 have live ammunition. It's nothing like an across-the-board
6 prohibition.

7 Next, the 1876 Iowa law, the State says in its brief
8 that this prohibits firearms on trains. The details show
9 otherwise. It actually banned, quote:

03:33PM 10 "...presenting or discharging any gun,
11 pistol, or other firearm at any railroad, train,
12 car, or locomotive engine."

13 Right after, it also barred, quote, "throwing any
14 stone or other substance of any nature." Has nothing to do
03:34PM 15 with carrying on a train.

16 So we continue, Your Honor, when it comes to
17 Subsection 10, these analogs do not come anywhere close to
18 satisfying the State's burden. I've got a couple more, and
19 then I'll turn it over to co-counsel to cover some of the other
03:34PM 20 locations.

21 THE COURT: Very well.

22 MR. BENBROOK: As to stadiums and amusement parks,
23 Subsection 16 and 19, these fail for the same reasons that the
24 public gatherings fail. There is no tradition. Again, the
03:34PM 25 State falls back on the fairs or markets from the Statute of

1 Northampton and the Virginia law that I just described which
2 was not the sensitive location law.

3 It's important to stress here that while the State
4 says over and over again, "Well, there's just so many different
03:35PM 5 things, you can't" -- founders couldn't have imagined something
6 as big and ornate as Dodger Stadium, notwithstanding the
7 thousand years before the Romans had built the Colosseum, which
8 is bigger than Dodger Stadium. There were many forms of
9 entertainment where lots of people gather.

03:35PM 10 Our brief references the proliferation of racetracks
11 in the 1700s, the existence of circuses dating back to
12 George Washington's time. The State's own evidence shows this
13 as well.

14 The Blakey article cited by the State in the
03:35PM 15 *Rutgers Law Journal* knows there was an opera occurring in
16 Charleston in 1735.

17 The Rivas declaration at paragraph 32 talks about a
18 major theater in Philadelphia in the late 1700s, right next to
19 Independence Hall, that housed 2,000 people. And then he tells
03:36PM 20 us two paragraphs later in paragraph 34 that Philadelphia never
21 banned guns there.

22 In short, the founders were very familiar with the
23 idea of amusement and sporting events and gatherings for those
24 purposes, but they didn't think to ban firearms there.

03:36PM 25 And while public transport isn't one of my

1 subsections, my co-counsel will cover, but I can't help but
2 observed that since the State has referred to the oral argument
3 at *Bruen* and Justice Roberts' comment about Giants Stadium, I
4 come in, Your Honor, to the transcript of the oral argument and
03:36PM 5 Justice Alito's line of questioning from the New York Attorney
6 General's office where he asked how it's possibly fair that
7 law-abiding citizens can't carry a gun to defend themselves on
8 the subway when everyone in the world knows that criminals are
9 riding the subways with their own guns.

03:37PM 10 Second to the last for me, gambling casinos,
11 Subsection 15. The State argues that nothing like casinos
12 existed and totally ignores the Louisiana law or the fact that
13 we point out that the Louisiana government itself established a
14 casino in 1753 and didn't ban carry.

03:37PM 15 State says it's sensitive now because gambling takes
16 place in the casino and that attracts bad people, so they
17 shouldn't be allowed to carry. This is the policy argument.
18 And counsel talked about policy considerations over and over
19 again. But certainly, in this context as a justification,
03:37PM 20 *Bruen* says those policy justifications do not apply. It's a
21 text and history test.

22 So as a matter of history, again, when it comes to
23 gambling, the State's own materials make our case for us. They
24 show that gambling was very common at the founding. The
03:38PM 25 Mancall declaration tells us about gambling and taverns.

1 Mancall declaration tell us about gambling at horse races. The
2 Brewer declaration refers to gambling at cock fights.

3 The State also offers the Mancall declaration and
4 the Blakey article to show that gambling was heavily regulated,
03:38PM 5 but nowhere can they point to any founding era regulation that
6 limited guns where people gamble. Under *Bruen*, that's the end
7 of the story.

8 Finally, for me, Your Honor, the private-property
9 default rule, again, *Bruen*, quote, "...guarantees a general
03:39PM 10 right" -- says in the Second Amendment "...guarantees a general
11 right to public carry."

12 Subsection 26, the private-property default rule,
13 says on its face that it applies to commercial establishments
14 that are open to the public.

03:39PM 15 SB 2 says we don't care what *Bruen* says about
16 general right to public carry. You don't have a general right
17 to carry in public unless the business owner affirmatively
18 consents. Counsel talks -- and we -- we talk in the brief
19 about the history of the -- the justification for the

03:39PM 20 assumption that people bring their -- come to publicly open
21 businesses attendant with all their other rights arises from
22 the concept that members of the public have implied consent to
23 be there with their rights unless the consent is affirmatively
24 conditioned or withdrawn, and the State wants to flip that
03:40PM 25 presumption.

1 With respect to the test itself, the State says we
2 don't even get to history because the text doesn't cover.
3 Well, it actually does cover. The Second Amendment text does
4 not distinguish where the right to keep and bear arms shall not
03:40PM 5 be infringed. It says the right to keep and bear arms shall
6 not be infringed. The argument about where it implies is what
7 we're here to talk about. We're talking about the so-called
8 sensitive places.

9 So when counsel says, "Oh, you know, this doesn't
03:40PM 10 even pass the textual point," the reality is the argument about
11 whether it applies to private property by necessity falls
12 within the second *Bruen* prong. That's the whole point of what
13 we're here to talk about.

14 In any even, the concept that there's no State
03:40PM 15 action here doesn't make any sense. Candidly, Your Honor,
16 respectfully, it's like saying a state can ban speech on
17 property or can say certain things can be said on private
18 businesses, but certain things -- basically content -- a
19 noncontent neutral speech restriction and say, "Well, hey, the
03:41PM 20 State -- this is not State action." It is State action.

21 The supposed analogs justifying this don't come
22 close. We've covered it in the brief. The laws -- the text of
23 those laws speak for themselves. They refer to hunting.
24 They're about enclosed lands. They're radically different how
03:41PM 25 they limit long guns on farms for hunting. Nothing like saying

1 no carrying in any private business. The scope is totally
2 different. It's erratically different. Why? To prevent long
3 gun violence against animals, not to prevent violence among
4 people.

03:42PM 5 Finally, it's worth noting that every court -- my
6 understanding is each of the reported decisions to cover this
7 similar rule have rejected it.

8 So I will conclude with that and turn it over to
9 co-counsel. Thank you, Your Honor.

03:42PM 10 THE COURT: I appreciate your argument. Thank you.

11 MR. FRANK: Thank you for the opportunity to be
12 heard again, Your Honor. Appreciate it.

13 One of the themes that I picked up on when listening
14 to the Attorney General speak, Your Honor, was that the proper
03:42PM 15 way to proceed with the analogical analysis, meaning when we're
16 looking at places today that are very different than they were
17 during the ratification era, or even places that may be
18 completely new that have no real analog -- what I'm hearing the
19 Deputy Attorney General argue for is that the Second Amendment
03:43PM 20 is only coterminous with a degree that we can recognize modern
21 places and say that they're similar to those in the past. But
22 if we can't, the Second Amendment doesn't apply.

23 And this argument has been made in other civil
24 rights situations -- circumstances, and *Heller* had to remind us
03:43PM 25 that that's not how we deal with constitutional civil liberty

1 interest. The First Amendment extends to any place where
2 people -- any instrumentality that people are using to
3 communicate. And just because we didn't have satellites in
4 1791 doesn't mean that the Government doesn't need to get a
03:43PM 5 warrant to use a satellite to pry into the content of your
6 communications. And it's easy to lose track of that, but that
7 is a logical consequence of this very expansive approach to the
8 more nuanced approach that the Attorney General advances, which
9 is that if we can't really find a reasonable location analog,
03:44PM 10 well, then the tie goes to the State's police interest and we
11 can forget about the constitutional nature of the right that
12 we're talking about here.

13 And when you look at the consequence of that, what's
14 left is the sidewalk. That can't be what the Supreme Court had
03:44PM 15 in mind. It's not possible. And it is hard to know. It's
16 hard to discern what to make of *Heller's* language about
17 sensitive places. Those issues were not squarely before the
18 Court in *Heller* or *Bruen*. *Heller* did not -- was not asked are
19 schools sensitive places, are local government buildings
03:44PM 20 sensitive places. It just -- in fashion, it looks more like
21 dicta than holding.

22 It said these places are presumptively. Well,
23 presumptively means subject to rebuttal. It's bizarre to start
24 thinking about the question about whether or not the Supreme
03:45PM 25 Court did that intentionally, whether they intentionally

1 announced that there were carve-outs from historical Second
2 Amendment scrutiny and started with those three. There might
3 have been prudential reasons why they did that. But I'm of the
4 opinion that when the Supreme Court establishes a standard of
03:45PM 5 review, they expect courts to apply that standard of review.
6 And that standard of review is the historical scrutiny that
7 we're here today to apply.

8 And related to that question of what really makes a
9 place sensitive, I think we have to look at -- well, we can
03:45PM 10 start with this building, which we all agree we feel very safe.
11 I know I do. I know Your Honor does. There are armed men at
12 every point of ingress and egress, and the people who are in
13 this building most of the time are people of importance. You
14 have jurists, you have assistant U.S. attorneys, you have
03:45PM 15 members of law enforcement community.

16 And so the Government says, you know, this space
17 needs to be safe because important government activities are
18 unfolding here on a daily basis. And people with appointed
19 positions of power in our society are often the targets of
03:46PM 20 violence. And so, of course, this place is a sensitive place,
21 so is the White House.

22 And I believe in a 2015 opinion, Judge Tymkovich
23 said, you know, the White House and the curtilage, essentially,
24 of the White House is all sensitive. We're not going to split
03:46PM 25 hairs and say the White House lawn is less important than the

1 interior of the Oval Office. It's all important. But when you
2 go down the hierarchy of the significance of the people and the
3 government buildings and the nature of the work that they're
4 doing, it starts to look much more fuzzy of what really is a
03:46PM 5 sensitive location.

6 If I take -- if I need to get a replacement driver's
7 license at the DMV, is that -- is the local government DMV
8 building really as important as the White House or the Ronald
9 Reagan Federal Court that we're in right now? I think

03:47PM 10 reasonable minds can disagree about that. And that all flows
11 from taking a very specific look at what is actually going on
12 in these places. And it's not enough to point to areas in
13 society and say that these places are dense like a metro car or
14 that there are vulnerable people such as children who often use
03:47PM 15 the metro cars in public transportation.

16 I see children everywhere I go. I see children when
17 I go shopping. I see children when I play golf. I see
18 children at the shooting range. I see them everywhere I go.
19 Under the State's expansive notion of how we spot and identify
03:47PM 20 a sensitive place, virtually everything starts to look pretty
21 sensitive. And paradoxically, that's what makes the right to
22 carry so important because people want to go with families
23 wherever they go. And if the they have a right to carry a gun
24 with them, if something terrible happens, they can at least
03:47PM 25 have some shot at self-defense. They should have that right,

1 and that's what the Supreme Court said.

2 We saw Roberts and Alito allude to that. Alito gave
3 the -- at oral argument, Alito gave the example of, well, what
4 about if somebody has a job working late at a restaurant and
03:48PM 5 they get off work late at night and have to ride the subway
6 home? If density is what makes a sensitive place, well, then
7 they can't carry on the subway. It seemed very clear -- it
8 didn't make it into the text of the *Bruen* opinion, but it
9 seemed clear that we're not going to narrowly construe this
03:48PM 10 right that we're recognizing in the Second Amendment text to be
11 outside the home.

12 So if under the State's conception of what *Bruen*
13 will tolerate, government property is a place where a lawfully
14 issued permit is not -- is not going to be recognized. And
03:48PM 15 private property -- at least private commercial property is
16 also a place where it's presumptively not going to be
17 recognized. What's left? Not much. And that is not -- that
18 is not consistent with the right announced in *Bruen*.

19 With those points made, I'd like to address just a
03:49PM 20 few things about the specific subdivisions that the May
21 plaintiffs have targeted.

22 THE COURT: If you could be brief.

23 MR. FRANK: I will absolutely attempt to be brief.

24 I'll begin with health care facilities. So the State fails to
03:49PM 25 show any historical tradition of banning arms at hospitals.

1 And while it's true that health care facilities in the 1790s
2 were very different than modern health care facilities of
3 today, we still know that they had health care facilities.

4 And given this State's expert's descriptions of
03:49PM 5 these places, they seem like the kind of place that is more
6 akin to almost a correctional facility, in some sense, than a
7 hospital. These indigent people had nowhere else to go and
8 quality of medical care was not very modern, to say the least.
9 But we see no tradition. So it's not enough for the State to
03:49PM 10 say, "Well, modern hospitals are different and there's
11 vulnerable people there; therefore, the right to carry doesn't
12 extend that."

13 And the State's attempt to slip in hospitals into
14 the back door of these -- of schools being sensitive places or
03:50PM 15 being educational facilities kind of leads us back to a
16 fundamental problem which is that we need to look at what it is
17 about these facilities that make them look like schools.
18 There's not much that I can see on the record.

19 And moving to public transportation, which I briefly
03:50PM 20 talked about, the State is right, that public transportation as
21 we know it didn't exist in the 1790s. But we know that
22 railroads emerged in the 1800s --

23 **(Reporter requests clarification**
24 **for the record.)**

03:50PM 25 MR. FRANK: We know that the only regulations that

1 we see for railroads are a few private company rules about if
2 you're going to bring a firearm, you're going to have to stow
3 it or something like that.

4 So it's not enough to point to the density and the
03:51PM 5 people in close locations. And it also isn't enough to say,
6 well, most public transportation is publicly owned. So it's a
7 public building and therefore we can slip in public
8 transportation into that exception. Because, like I explained,
9 government buildings are not all created equal. And public
03:51PM 10 transportation, in some sense, is the opposite of a place like
11 the building that we're in now or the White House. It's public
12 transportation. Anyone can go there. There is no controlled
13 points of ingress or egress. There are occasionally guards,
14 but these days not so often. But that alone wouldn't suffice
03:51PM 15 to make it a sensitive place.

16 Now, the playgrounds and parks aspect of SB 2 do
17 merge a little bit. In some respects, playgrounds are going to
18 be similar to schools because virtually every school has a
19 playground. But there are also places that are not affiliated
03:52PM 20 with schools that also have playgrounds. Occasionally, I see
21 playgrounds at pop-up farmers markets and public streets. I
22 also see them inside shopping malls. And I see them in places
23 that I can't always discern whether they're a public park or
24 private property, which is a good thing. It's good to see
03:52PM 25 communities build playgrounds.

1 But it's not enough to simply say playgrounds are
2 often associated with schools and therefore schools are
3 sensitive, because of what *Heller* and *Bruen* said about them.
4 We still have to -- we still have to show why they are like
03:52PM 5 that. And at least at public playgrounds and parks, there is
6 no *in loco parentis* dimension to that. Any member of the
7 public can visit a park as we know. Most parks today have at
8 least some small area of the park that's set aside seemingly
9 for homeless encampments. So anyone can be there.

03:53PM 10 If I start to think of a place that anyone can be,
11 it starts to look a lot like the general public, which is what
12 I believe the Supreme Court had in mind when they were
13 establishing there's a right to be armed when you're out in
14 public areas.

03:53PM 15 Regarding parks, the problem with the State's
16 argument is that it throws *Bruen's* requirement for a -- to
17 demonstrate -- to marshal evidence of a well-subscribed and
18 representative tradition of regulation. We know that parks
19 were, in some sense, a creature of the 19th Century. But what
03:53PM 20 we see are a handful of regulations that ban carry in a handful
21 of specific parks across ten states at a time where I believe
22 there were an average of 45 or so states admitted to the union.
23 So this is a minority of states selecting only a few parks.
24 And the State doesn't do enough -- doesn't pay enough attention
03:53PM 25 to the difference between an urban park and rural park, which

1 is somebody that Justice Roberts brought up at oral argument.
2 He joked about it being the only threat is a deer. It's a
3 point well taken. There's no historical tradition banning
4 carry in parks just broadly. The most that the State has
03:54PM 5 mustered is insufficient to satisfy the *Bruen* requirement.

6 Continuing on to -- forgive me -- places of worship.
7 So as Your Honor noted earlier, there's been terrible acts of
8 violence at places of worship. And the place of worship aspect
9 of SB 2 is, I'd say, a high rate of vampire rule because it
03:54PM 10 imposes an obligation on places of worship to opt out of a
11 default presumption.

12 But it should go without saying that houses of
13 worship were present in the 1790s. And the historical
14 tradition that we actually see is a historical tradition of
03:55PM 15 requiring people to bring arms. And the Attorney General has
16 characterized that as a quasi-militia type of law. I don't see
17 that in my review of the record. I see a lot that requires you
18 to bring arms into a church as frankly it speaks for itself.
19 And nor is it appropriately characterized as an indication that
03:55PM 20 the right to bear arms could be regulated. I mean that
21 completely inverts the analysis.

22 The argument that I believe I heard the Attorney
23 General make was that this is proof that we can regulate.
24 Well, it seems to me like they're telling you to bring arms to
03:55PM 25 church, not telling you can't have them. So accept that as a

1 historical regulatory analog for a ban to me -- I'm not sure
2 what that means, but I wouldn't make that argument.

3 And then turning to financial institutions, it's
4 true that modern financial retail banking institutions are
03:56PM 5 something of a creature of modernity. But what we know is that
6 we don't really see any laws regulating them, and we can't just
7 say, "oh, banks are similar to airports or banks are similar to
8 government buildings," which is an argument that the Attorney
9 General makes. In what sense is a bank truly like a government
03:56PM 10 building? Banks aren't owned by the government. There's no
11 government employees transacting business there. I fail to see
12 any factual basis to say -- to hold these akin. Nor are they
13 like airports.

14 When I go visit the bank, I don't surrender myself
03:56PM 15 to the territory of the federal government and pass through
16 multiple metal detectors and armed men. These are not in any
17 sense similar enough to qualify as sensitive places under that.

18 And the final thing I'd like to make a few remarks
19 about is the vampire rule, the opt-out provision. So *Bruen*
03:57PM 20 expressly says that expanding the category of sensitive places
21 simply to all places of public congregation that are not
22 isolated from law enforcement defines the category of sensitive
23 places far too broadly.

24 And to be clear, we are not stating that we have a
03:57PM 25 right superior to the right of any commercial private property

1 owner. They have the right. If they do not want to carry on
2 their premises, that's fine. Similarly, the State can install
3 a default rule that restricts people's right to carry in places
4 that are open to the public. I don't need to pass through a
03:57PM 5 metal detector to go to In-N-Out Burgers. This is true of the
6 vast majority of the people in the public space.

7 So the State says that private property has the
8 sanctity to it. It doesn't want to intrude into the domain of
9 private property owners but then passes a law that makes a
03:57PM 10 decision for every private property owner in the State. So
11 that doesn't work. That does way too much damage to the right
12 that *Bruen* established.

13 So with that, unless the Court has any questions for
14 me, I'm --

03:58PM 15 THE COURT: No. It's been very thorough.

16 MR. BENBROOK: Your Honor, I'm sorry, I should have
17 mentioned Mr. Duvernay will address the self-defense issue
18 raised by counsel and --

19 THE COURT: Briefly.

03:58PM 20 MR. BENBROOK: -- and briefly talk about alcohol and
21 maybe zoos, but brief.

22 MR. DUVERNAY: I promise I've been allocated to
23 locations that are nearest and dearest to the heart.

24 Good afternoon, Your Honor. Earlier you asked our
03:58PM 25 friend on the other side about the possibility that a staff

1 member or someone may want to carry a firearm and feel the need
2 for self-defense while riding on public transits and walking to
3 and from, say, a government building or place of work. And
4 Mr. Meyerhoff identified Penal Code Section 26045 as a possible
03:59PM 5 safety net here.

6 That statute provides your staff member or any of
7 our friends in that situation no solace in this instance. It's
8 a defense of justifiable violation of law when carrying a
9 firearm is necessary to preserve life or property against an
03:59PM 10 immediate grave danger. And immediate is defined by that
11 statute as the brief interval to allow for law enforcement
12 response. So this does not provide for a freewheeling right to
13 evade the general prohibitions on carry in the instance that
14 you provided. It is circumscribed to a precise situation, and
03:59PM 15 it's a defense to a criminal charge.

16 Turning briefly to the prohibition against carrying
17 in any place where intoxicating liquors are sold for on-site
18 consumption, this does not just apply to a crowded nightclub or
19 rowdy dive bar, it applies to Olive Garden, to wineries, even
04:00PM 20 the coffee shop down the street that sells hard kombucha. And
21 it applies not just to people who are intoxicated or consuming
22 alcohol but to anyone who's present there.

23 And here, it's important to focus on what the State
24 has actually provided in its evidence. It has declarations
04:00PM 25 from Mr. Charles, Mr. Mancall, and Professor Winkler that show

1 a long history of licensing and government regulations dating
2 back to the 18th Century of saloons and similar establishments.
3 But what they don't show is a comparable history of analogous
4 regulation.

04:00PM 5 The State's identified a handful of territorial and
6 local laws prohibiting the carrying of firearms in bars and
7 similar establishments. Those aren't well established or
8 representative. But even if they were, the majority of the
9 laws they identify are aimed at keeping folks who are active
04:01PM 10 members of the militia from carrying firearms in a bar or
11 similar establishment, not carrying if you are intoxicated,
12 criminalizing that sort of conduct.

13 But *Bruen* teaches that when a general societal
14 problem has persisted since the 18th Century, those regulations
04:01PM 15 have to be distinctly similar. And there's an absence of
16 distinctly similar regulation here.

17 Turning finally to zoos, museums, and libraries, I
18 will be very brief here. The State's arguments focus on the
19 general presence of crowded areas on the one hand and
04:02PM 20 vulnerable populations of the other. My colleagues have
21 addressed those both with respect to the general affray and
22 similar statutes as well as the regulations governing schools
23 and playgrounds.

24 I will direct Your Honor, though, to the *Koons*
04:02PM 25 decision out of -- that's K-o-o-n-s -- v. *Platkin*, out of the

1 District of New Jersey, that rejected identical arguments from
2 the State there in each of those locations.

3 THE COURT: Thank you.

4 All right. Mr. Meyerhoff.

04:02PM 5 MR. MEYERHOFF: Thank you, Your Honor.

6 I'd like to address the point that I think multiple
7 plaintiffs' counsel made where they said the State of
8 California thinks it's not a big deal. That's not true. The
9 State of California has recognized a range of societal

04:03PM 10 problems. And as we talked about at the beginning, issued
11 legislative findings had passed a law compliant with *Bruen* that
12 restricts the carry in certain sensitive places.

13 Plaintiffs' counsel I believe agreed that ultimately
14 analysis needs to go provision by provision. We certainly
04:03PM 15 agree with that. I think it's interesting that at one point --
16 I can't recall the exact terminology, but they said, you know,
17 "We've only identified the onerous provisions."

18 And at another point they talked about that there's
19 something intuitive about the White House. Of course the White
04:03PM 20 House would be protected. It's intuitive that airports are
21 sensitive places, but they don't really provide a framework for
22 why. And if *Bruen* is concerned with the text of the Second
23 Amendment and limiting governments, of course, and intuitions,
24 and seems like it makes sense, that can't be the test. And
04:04PM 25 indeed, if we talk about these places we discussed earlier that

1 schools -- many schools do not have armed security. I think an
2 argument was made about the *in loco parentis* idea that because
3 parents drop their kids off at school and because there's
4 security there that -- or that that's the reason, but, in fact,
04:04PM 5 if you look at many of the early statutes that we've identified
6 relating to schools, including an 1870 Texas law, which is in
7 our compendium, 1874 Missouri law, 1893 Oklahoma law, those
8 broadly restrict carry within school rooms. There's no
9 exception for teachers. There's no exception for other
04:04PM 10 faculty. So the idea that there's an *in loco parentis* and does
11 school have armed guards, that's a historical. That's not
12 reflected in the historical record.

13 I also heard from plaintiffs' counsel an attempt to
14 balance, to say, well, a courthouse feels more secure than a
04:05PM 15 post office. So that should be sufficient. Well, I don't know
16 if that's true. The New York Stock Exchange is a financial
17 institution. One could imagine its importance is perhaps
18 greater than a school. I would not make that argument, but
19 certainly some could. But this attempt to sort of interest
04:05PM 20 balance and intuit and think, of course, this is how it should
21 be, that can't drive the analysis.

22 And, indeed, airports were mentioned. I don't want
23 to reveal my age because I -- but I remember a time when you
24 didn't need to have a ticket to go to the -- to go to the gate.
04:05PM 25 And I'm not even sure you need it to pass through a metal

1 detector. I think security at airports only really emerged in
2 any real form beginning in the 1970s with hijackings and things
3 like that. So I think there's a danger in looking at today
4 identifying features of sensitive places and then trying to
04:06PM 5 read that back to 1791. The Court in *Bruen* doesn't allow that.

6 I think when we look at health care facilities and
7 public transit, again we hear from plaintiffs the desire for a
8 dead ringer. They don't have the same statute, but that's not
9 what the Court in *Bruen* required. The court in *Bruen* said it
04:06PM 10 was examples that used an e.g., not an i.e., and it's
11 specifically countenanced new and analogous sensitive places.

12 On the municipal parks and state parks point, we
13 identify numerous municipal parks in major cities. There's no
14 evidence that those restrictions were challenged either in
04:06PM 15 court or in secondary sources that could have been presented to
16 the court in which people complain that those restrictions were
17 unconstitutional.

18 We also, in our compendium of exhibits -- we
19 identify numerous, at least more than a dozen, state park
04:07PM 20 restrictions all from the beginning of the 20th Century when
21 the state park system emerged.

22 I think in terms of houses of worship, plaintiff
23 said, well, how could the Attorney General make the argument
24 that these requirements bring firearms to church reflected the
04:07PM 25 sense that the legislatures have long exercised significant

1 regulatory power over firearm carry in churches? Well, they
2 suggested it's outlandish. It's not. In fact, the court, in
3 *Goldstein*, which we cited in our briefs -- that's a quotation
4 from there. They refused to preliminarily enjoin firearms
04:07PM 5 restrictions.

6 Again, I think with racetracks and circuses, they
7 mention "Here's a single historical example." "Here's another
8 singular historical example." I think, again, we need to
9 caution the fact that an opera may or may not have existed in a
04:08PM 10 single city in America in a particular period. The fact that
11 we don't see numerous legislatures or even the legislature of
12 the State regulating against that, I think that's the danger of
13 reading silence as a contrary tradition. As the Court may have
14 mentioned, that's a risky proposition.

04:08PM 15 Indeed, there's a variety of reasons that a
16 legislature may not choose to pass a law. Legislatures do not
17 legislate to their constitutional limits. Indeed, I think we
18 would all hope that they don't, that they don't, in every
19 particular case, pass as many laws as is constitutionally
04:08PM 20 possible. Instead of saying where are the multitude of laws
21 from the particular period, that's how plaintiffs want to read
22 *Bruen*. But instead, what *Bruen* commands us is that we look at
23 the public understanding of the right. And so the mere fact
24 that legislatures chose not to address a particular problem in
04:08PM 25 a particular time period may be reflective of a variety of

1 reasons.

2 I think in terms of the private property
3 restriction, the question is not whether there is state action,
4 SB 2, it's obviously a state action, the question is, is
04:09PM 5 plaintiffs' harm fairly attributable to that state action? And
6 I think plaintiffs can't circle the square. Either the
7 Second Amendment has some application to private property or it
8 doesn't. And there's no evidence in the historical record that
9 it does.

04:09PM 10 I think -- the analogy I can think of is if I have a
11 friend who lives across from the embassy of a country whose
12 policies I oppose, and they say, "You can come onto my property
13 and protest that country," I go onto their property and
14 protest, I'm exercising my First Amendment rights to protest
04:09PM 15 this country that I oppose, but I'm not on this person's
16 property pursuant to my First Amendment right.

17 The First Amendment gives me no right or presumption
18 to be on their property. I'm simply exercising a right free of
19 government interference on someone's private property because I
04:10PM 20 have permission to do so. And I don't believe the Second
21 Amendment codifies how that permission is granted. Is it
22 express? Is it implied? And I don't think plaintiffs have
23 pointed to anything around the time of the Second Amendment or
24 around reconstruction that suggests it codified that.

04:10PM 25 In terms of the exception that we mentioned, which

1 is in the record, we interpret that exception, for example,
2 that if I am walking on a public thoroughfare, a dark and
3 dangerous street, as Your Honor mentioned, and I'm walking by a
4 playground and I see someone committing a crime on that
04:10PM 5 playground, well, I think there's an argument made that CCW
6 holders are law-abiding citizens. They want to contribute to
7 the safety of society. Our interpretation of that section is
8 that would permit an individual to go into that playground with
9 their concealed firearm and potentially use that firearm in
04:11PM 10 defense of themselves or another.

11 So I think that is the exception that comes into
12 play. And again, we're operating against the backdrop of broad
13 restrictions on carriage and any public assembly that didn't
14 contain the exceptions that we talk about.

04:11PM 15 I think finally plaintiffs have suggested in their
16 briefing here today that it is the State that has a limitless
17 interpretation of *Bruen*. There is no restriction on what the
18 State can do. That is their opinion of our argument. It's
19 not. We are the ones who have gone provision by provision and
04:11PM 20 followed the *Bruen* test. Where is the relevantly similar
21 historical analog? Are the comparable burdens and
22 justifications the same or similar?

23 And then we take that law and situate it within the
24 nation's historical tradition. We do so because *Bruen* talked
04:12PM 25 about laws that were outliers. And so those laws did not fit

1 within the nation's historical tradition. But we brought
2 forward leading experts, not only on the Second Amendment, but
3 also individuals who have never opined on the Second Amendment
4 before, historians on specific places who can provide context
04:12PM 5 for those places. In fact, it appears that it is plaintiffs
6 who have a limitless argument.

7 I read *Bruen* to find that the five sensitive places
8 that are listed there are settled, that they're aware of no
9 dispute as to the constitutionality of these places. But it
04:12PM 10 appears that even plaintiffs suggest maybe that's not settled,
11 which seems to fly in the face of *Bruen* but also goes back to
12 the point I brought up earlier, which is it's plaintiffs who
13 seem to say an airplane kind of feels like a place that we
14 shouldn't have firearms, so we won't have them. And I guess a
04:13PM 15 school feels like a place that we shouldn't have firearms.

16 But these things change over time. When I was in
17 high school, parents could wander in and out of the school.
18 There was no problem. They could wander in, wander out.
19 Alumni could come, they could come back. When I visit my
04:13PM 20 school today, 23 years later, I have to get a pass. There's
21 security everywhere. So modernity has changed. Places have
22 changed, but that can't alter the constitutional analysis.

23 So while plaintiffs seem to be proposing some sort
24 of free-floating test based on course and balancing and what
04:13PM 25 places are more sensitive than others, defendants have, place

1 by place, gone through the *Bruen* analysis, identified those
2 relevant historical analogs and situated them within the
3 historical tradition. For those reasons and those set forth in
4 the briefing, this Court should deny the preliminary injunction
04:14PM 5 in its entirety.

6 I will say, and we mentioned in our briefing as
7 well, to the extent the Court is inclined to enjoin any of the
8 provisions, we would ask for a stay pending appeal.

9 Thank you, Your Honor.

04:14PM 10 THE COURT: Well, I appreciate the briefing, and I
11 appreciate all the arguments that I heard today. I'll take it
12 under submission and try to get a decision out as soon as
13 possible and forthwith.

14 THE COURTROOM DEPUTY: All rise.

04:14PM 15 **(Proceedings concluded at 4:14 p.m.)**

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